

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(1) NATURE/1001. Meaning of 'market'.

MARKETS, FAIRS AND STREET TRADING (

1. THE RIGHT OF MARKET

(1) NATURE

1001. Meaning of 'market'.

At common law a market¹ is a franchise² conferring a right to hold a concourse of buyers and sellers to dispose of the commodities in respect of which the franchise is given³. It is also applied to the same right when conferred by Act of Parliament⁴. Although strictly applicable to the right itself⁵, 'market' is often applied to the concourse of buyers and sellers⁶, or to the market-place⁷, or to the time of holding the market⁸. A gathering of buyers and sellers, although held at regular intervals in a fixed place, if it is not held by virtue of a franchise or under statutory authority, is not in law a market⁹ and cannot enjoy the privileges of a franchise market or fair¹⁰.

1 The word is derived from the Latin 'mercatus', which signifies trade or traffic, or buying and selling. So also is 'mart', which, according to 2 Co Inst 221, is 'a great faire holden every year'. Markets held for the sale of agricultural livestock are frequently termed 'marts'. In Latin instruments 'mercatus' is the common word for market, whether a market franchise or a market de facto. 'Forum' is sometimes so used (cf 1 Domesday, 163a, 219b, 356a), but more often it means the market-place; 'nundinae' (really market-days) usually means a fair but is occasionally used for market. 'Feria' is the ordinary word for fair: see PARA 1002 note 1 post.

2 2 BI Com (14th Edn) 36, 37; 3 Cru dig (4th Edn) 264 (xxvii, Franchises, s 85); see 1 BI Com (14th Edn) 273; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 879.

3 *Marquis of Downshire v O'Brien* (1887) 19 LR Ir 380 at 390 per Chatterton V-C; approved in *Scottish Co-operative Wholesale Society Ltd v Ulster Farmers' Mart Co Ltd* [1960] AC 63, [1959] 2 All ER 486, HL. The grant of a market was usually for a specified day in the week: see *Oswestry Corp v Hudd (Valuation Officer)* [1966] 1 All ER 490 at 496, [1966] 1 WLR 363 at 377, CA, per Russell LJ. A car boot sale constitutes a market: *Newcastle-upon-Tyne City Council v Noble* (1990) 89 LGR 618. As to the creation of markets see PARA 1004 et seq post. As to temporary markets see PARA 1020 post.

4 As to markets created by statute see PARA 1009 post.

5 'A market is the privilege within a town to hold a market': Com Dig Market (A).

6 For instance, in the Oxford English Dictionary 'market' is defined as 'the meeting or congregating together of people for the purchase and sale of provisions or livestock, publicly displayed, at a fixed time and place; the occasion or time during which such goods are displayed for sale; also the company of people at such a meeting'. See also *R v Bungay Justices, ex p Long* (1959) 123 JP 315, DC.

7 'The usual place where a market is held is the market, not every place within the same town': Com Dig, Market (A).

8 See note 6 supra.

9 'The King alone possesses the power of creating markets and fairs': Chitty's Prerogatives of the Crown 193, citing 2 Co Inst 220; *Marquis of Downshire v O'Brien* (1887) 19 LR Ir 380 at 389 per Hedges E Chatterton V-C. As to the creation of markets by local Acts see PARAS 1009-1014 post; and as to creation by public Acts see PARAS 1015-1017 post.

10 See PARA 1052 post.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(1) NATURE/1002. Meaning of 'fair'.

1002. Meaning of 'fair'.

At common law a fair¹ is a franchise² conferring a right to hold a concourse of buyers and sellers³. 'Fair' is applied also to the same right when conferred by Act of Parliament⁴.

1 In Latin instruments 'feria' or 'nundinae' are the words commonly used for a fair, although 'nundinae' may sometimes mean a market: see PARA 1001 note 1 ante. Grants of fairs were generally for specified days, eg the day before or the day of a festival or the day after. 'Wake' was used for the merry-making which went with the fair. 'Wake' means a concourse for purposes of pleasure held usually on a feast day following a vigil connected with the local patron saint or some religious purpose: see *Wyld v Silver* [1963] Ch 243 at 261-262, [1962] 3 All ER 309 at 317, CA, per Harman LJ. An assembly of roundabouts, shows, etc, although held annually, is not a fair: *Walker v Murphy* [1914] 2 Ch 293; affd [1915] 1 Ch 71, CA; and see PARA 1003 post.

2 2 BI Com (14th Edn) 37; 3 Cru Dig (4th Edn) 264 (xxvii, Franchises, s 85). Cf 'market', which is also a franchise: see PARA 1001 ante.

3 See PARA 603 note 3 post.

4 However, 'statute' or 'hiring' fairs are survivals of statute sessions formerly held in connection with the fixing of wages under the Statutes of Labourers, and are not legal fairs or market: see *Simpson v Wells* (1872) LR 7 QB 214. The first of the Statutes of Labourers was 23 Edw 3 (Labourers Artificers, etc) (1349) (repealed by the Statute Law Revision Act 1863 (repealed)). 'Pleasure fairs' are not legal fairs or markets. 'Pleasure fair' means any place: (1) which is for the time being used wholly or mainly for providing, whether or not in combination with any other entertainment, any entertainment to which the Public Health Act 1961 s 75 (as amended) applies (see s 75(3)); and (2) for admission to which, or for the use of the contrivances in which, a charge is made: s 75(2)(a). For the meaning of 'travelling showmen's pleasure fair' see the Gaming Act 1968 s 52(1). As to the distinction between 'fair' and 'market' see PARA 1003 post.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(1) NATURE/1003. Distinction between market and fair.

1003. Distinction between market and fair.

As regards legal incidents, there seems to be no distinction, at common law, between a market and a fair¹. It has been laid down that every fair is a market, but every market is not a fair²; and a fair has accordingly been defined as a great sort of market, which is usually kept once or twice in the year, and a market to be less than a fair, being usually kept once or twice in the week³. It seems that the legal incidents of a fair do not include the amusements which often accompany the holding of fairs⁴, although their presence has been recognised by statute⁵. Therefore, the difference seems to lie merely in the size or frequency of the gathering⁶, and whether a particular gathering should be called a market or a fair must depend usually upon the term chosen for it in the instrument by which it is authorised. The two franchises are of equal dignity⁷.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 2 Co Inst 406, giving the reason why fairs were included in the term 'mercatus' as used in 13 Edw 1 (Statute of Westminster the Second) (1285) c 24 (repealed). As to the term 'marche' as used in 3 Edw 1 (Statute of Westminster the First) (1275) c 31 (repealed) see 2 Co Inst 221.

3 3 Readings upon the Statute Law ... by a Gentleman of the Middle Temple (1724) 172, citing 2 Co Inst 221; 15 Vin Abr 244, Market (A 3); Gunning's Law of Tolls 44. 'Fair' is a term of art and connotes a concourse of buyers and sellers for the purchase and sale of commodities pursuant to a franchise with an optional addition of provision for amusement: *Wyld v Silver* [1962] Ch 561 at 570, [1961] 3 All ER 1014 at 1019 per Lloyd-Jacob J; see also on appeal [1963] Ch 243 at 261, [1962] 3 All ER 309 at 317, CA, per Harman LJ ('a fair is only a market held at rarer intervals').

4 *Walker v Murphy* [1914] 2 Ch 293; affd [1915] 1 Ch 71, CA. In *Collins v Cooper* (1893) 68 LT 450, DC (Gainsford Bruce J dissenting), 'fair' was construed as including a fair solely devoted to amusements, but the Court of Appeal in *Walker v Murphy* supra, approved and adopted the construction of Gainsford Bruce J in the earlier case.

5 Thus the Metropolitan Police Act 1839 s 38 (as amended) (see PARA 1075 post) requires 'the business and amusements of all fairs' within the metropolitan police district not to begin before 6 am and to cease at 11 pm.

6 See *Collins v Cooper* (1893) 68 LT 450 at 452, DC, per Gainsford Bruce J.

7 See *Duke of Newcastle v Workshop UDC* [1902] 2 Ch 145 at 156 per Farwell J; and PARA 1068 post.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(2) CREATION/(i) Creation by Grant or Prescription/1004. Grant by the Crown.

(2) CREATION

(i) Creation by Grant or Prescription

1004. Grant by the Crown.

By virtue of the royal prerogative¹, the Crown has always had the power of granting to a subject the right of holding a market or fair², and in former times this power was exercised frequently. A market or fair which depends for its legal existence upon a grant from the Crown is a franchise³.

¹ As to the royal prerogative see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 367 et seq; CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 46 et seq.

² In early times the Crown occasionally established a market or fair by ordinance, without granting it to any subject: see *Burgesses of Parliament Case* (1614) Hob 14; *Merchant Adventurers Co v Rebow* (1687) 3 Mod Rep 126 at 127; 2 Roll Abr 197 (H) 4; 17 Vin Abr 145, Prerogative of the King (Hc) 4; Chitty's Prerogatives of the Crown 193. For instances see Rot Cart *temp* John, 77 (Portsmouth), 135 (Marlborough); Calendar of Close Rolls *temp* Edw 2 (1318-23), 166 (Woodstock), 173 (Middleton, Kent). It seems that an ordinance was the appropriate mode of establishing a market or fair in a royal manor. The ordinance took the form of a letter to the sheriff or other officer directing him to proclaim that a market or fair would be held: see the Calendar of Close Rolls *temp* Edw 2 (1318-23). For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

³ See PARAS 1001-1003 ante. The owner of a franchise does not act on behalf of the Crown: *Spook Erection Ltd v Secretary of State for the Environment* [1989] QB 300, [1988] 2 All ER 667, CA (no exemption from requirement to obtain planning permission).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(2) CREATION/(i) Creation by Grant or Prescription/1005. Limitation of power of the grant.

1005. Limitation of power of the grant.

The essence of a franchise is that the holder has a monopoly of market¹, the justification for which is that the existence of the market is for the benefit of the public², and, therefore, the Crown's power to grant markets and fairs³ has always been limited by the rule that a later grant, if made without the consent⁴ of the owner of an earlier grant, and injuriously affecting his rights under it, is void as against him⁵. A grant of a new market usually contains a clause to the effect that the market is not to be to the hurt of any neighbouring market⁶, and such a clause, if not expressed in the grant, is implied by law⁷.

Because of this limitation, a grant for a new market to be held by another person at the same times and within seven miles of the place in which an existing market is held is *prima facie* void as against the owner of the existing market⁸; and default by him in not providing proper accommodation cannot of itself justify the new grant. However, where the place defined by metes or bounds or the district where the grant permits the market to be held is not sufficient for the accommodation of buyers and sellers, the Crown has power to grant a new market as required, without affecting the existing market, for that portion of the public which cannot be accommodated in the existing market⁹.

1 For the meaning of 'market' see PARA 1001 ante.

2 *A-G v Horner (No 2)* [1913] 2 Ch 140 at 198, CA, per Hamilton LJ; *Leicester Forest Case* (1607) Cro Jac 155.

3 For the meaning of 'fair' see PARA 1002 ante.

4 Consent may be presumed from long acquiescence: *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927, HL; *Holcroft v Heel* (1799) 1 Bos & P 400; *Campbell v Wilson* (1803) 3 East 294, 298.

5 *Keeble v Hickeringall* (1706) Holt KB 19 per Holt CJ; 13 Vin Abr 514, Franchises (G) 9; *Re Islington Market Bill* (1835) 3 Cl & Fin 513.

6 'Ita ut non sit ad nocumentum vicinorum mercatorum': see 2 Co Inst 406; 2 Wms Saund (6th Edn) 174 n (2).

7 *R v Butler* (1685) 3 Lev 220 at 222, HL.

8 *Re Islington Market Bill* (1835) 3 Cl & Fin 513.

9 *Re Islington Market Bill* (1835) 3 Cl & Fin 513.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(2) CREATION/(i) Creation by Grant or Prescription/1006. Inquisition before grant.

1006. Inquisition before grant.

The Crown's usual practice has been not to make a grant of a new market or fair¹ until an inquisition has been held under a writ of ad quod damnum, and a return has been made to the writ stating that the jury found that such a market would not be to the damage of the Crown or any subject². However, the inquisition does not bar the Crown from proceeding by scire facias³ to obtain the repeal of a grant which is in fact injurious to an earlier grant, or which for any other reason, such as that the Crown was deceived in the making of it, is void⁴. Nor does it bar an action for damages against the holder of the new market, and the owner of the earlier grant may bring that action without waiting until the grant of the new market has been repealed⁵.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 Fitz Nat Brev 225. The writ of ad quod damnum (see 2 Bl Com (14th Edn) 271) has fallen into disuse.

3 As to scire facias see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 264; and PARA 1061 post.

4 17 Vin Abr 102, Prerogative of the King (O b) 14; *R v Aires* (1717) 10 Mod Rep 258, 354, sub nom *R v Eyre* 1 Stra 43; *R v Butler* (1685) 3 Lev 220, HL; *Re Islington Market Bill* (1835) 3 Cl & Fin 513.

5 2 Co Inst 406; and see PARA 1061 post.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(2) CREATION/(i) Creation by Grant or Prescription/1007. Extent of Crown's grant.

1007. Extent of Crown's grant.

A clause in a grant¹ made solely by the Crown, purporting to give a market² a protection greater than that which is attached by the common law to such a grant, would be void³.

A charter conferring market privileges, made by the Crown with Parliament's assent, has the same force as private or local and personal Acts of Parliament have, but no greater force⁴.

1 As to grants by the Crown see PARAS 1004-1006 ante.

2 For the meaning of 'market' see PARA 1001 ante.

3 *Re Islington Market Bill* (1835) 3 Cl & Fin 513 at 515, DC, per Park J.

4 *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927, HL. As to private, local and personal Acts of Parliament see STATUTES vol 44(1) (Reissue) PARA 1206 et seq.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(2) CREATION/(i) Creation by Grant or Prescription/1008. Markets by prescription.

1008. Markets by prescription.

Where a grant from the Crown¹ is not in evidence, the right of holding a market or fair² or of taking tolls may be established by prescription of immemorial user from which a lost grant may be presumed³. An uninterrupted modern user raises such a presumption⁴, but it is rebuttable by evidence that the user arose within the time of legal memory⁵.

Even if it can be shown that there was a time within legal memory when the market or fair did not exist, a lawful origin in a lost grant may be presumed from long user⁶.

1 As to grants by the Crown see PARAS 1004-1007 ante.

2 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

3 Co Litt 114b; 2 Co Inst 220; and see *Wyld v Silver* [1963] Ch 243, [1962] 3 All ER 309, CA. See further CUSTOM AND USAGE vol 12(1) (Reissue) PARA 620 et seq. As to prescription see EASEMENTS AND PROFITS A PRENDRE.

4 *Penryn Corp v Best* (1878) 3 Ex D 292, CA; *R v Joliffe* (1823) 2 B & C 54; *Jenkins v Harvey* (1835) 1 Cr M & R 877 at 894; *Shephard v Payne* (1864) 16 CBNS 132 at 136, Ex Ch. As to the presumption of regularity see *Calder Gravel Ltd v Kirklees Matropolitan Borough Council* (1989) 60 P & CR 322.

5 Co Litt 115a; *Kingston upon Hull Corp v Horner* (1774) 1 Cowp 102 at 108. The Prescription Act 1832 (see EASEMENTS AND PROFITS A PRENDRE) does not apply to market franchises: *Benjamin v Andrews* (1858) 5 CBNS 299.

6 *A-G v Horner* (1884) 14 QBD 245, CA (affd (1885) 11 App Cas 66, HL); *A-G v Horner (No 2)* [1913] 2 Ch 140, CA; *Benjamin v Andrews* (1858) 5 CBNS 299; *Campbell v Wilson* (1803) 3 East 294 at 298; *Holcroft v Heel* (1799) 1 Bos & P 400; *Kingston upon Hull Corp v Horner* (1774) 1 Cowp 102. As to the presumption of grant from the Crown see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 867-868. As to the presumption in favour of long user see EASEMENTS AND PROFITS A PRENDRE.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(2) CREATION/(ii) Creation by Local Acts/1009. Markets created by statute.

(ii) Creation by Local Acts

1009. Markets created by statute.

The right to hold a market or fair¹ may be created by statute, and in that case differs from a franchise granted solely by the Crown², since it is not liable to become forfeited to the Crown nor to be called in question by any process of scire facias³.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 As to grants by the Crown see PARAS 1004-1007 ante.

3 *New Windsor Corp'n v Taylor* [1899] AC 41 at 50, HL, per Lord Davey; see also at 45 per Earl Halsbury LC and at 48 per Lord Watson. As to forfeiture see PARA 1060 post. As to scire facias see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 264; and PARA 1061 post.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(2) CREATION/(ii) Creation by Local Acts/1010. Franchise regulated by local Act.

1010. Franchise regulated by local Act.

The effect of a local Act for the regulation of a market or fair¹ originally created by grant of the Crown² may be not merely to supplement the franchise by adding parliamentary rights, but to extinguish the franchise and to substitute the parliamentary rights³. The question whether the rights given by the Act have superseded those that previously existed can be determined only by considering the language of the Act⁴.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 As to grants by the Crown see PARAS 1004-1007 ante.

3 *Manchester Corpn v Lyons* (1882) 22 ChD 287, CA; *Birmingham Corpn v Foster* (1894) 70 LT 371; *Stevens v Chown*, *Stevens v Clark* [1901] 1 Ch 894; *Taylor v New Windsor Corpn* [1898] 1 QB 186, CA; affd [1899] AC 41, HL. In relation to a new statutory market, an intention may be more readily implied to negative or limit the rights or monopoly that would otherwise attach to the franchise than where a statute continues an existing market: *Hailsham Cattle Market Co v Tolman* [1915] 1 Ch 360; affd [1915] 2 Ch 1, CA.

4 *Manchester Corpn v Lyons* (1882) 22 ChD 287, CA, especially at 307 per Cotton LJ, and at 310 per Bowen LJ.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(2) CREATION/(ii) Creation by Local Acts/1011. Incorporation of the Markets and Fairs Clauses Act 1847.

1011. Incorporation of the Markets and Fairs Clauses Act 1847.

Local Acts for the establishment or regulation of markets or fairs¹ usually incorporate the whole or some parts of the Markets and Fairs Clauses Act 1847², the object of which was to avoid repetition and to ensure greater uniformity by comprising in one Act the sundry provisions that had usually been inserted in earlier local Acts authorising such undertakings³.

The Act extends only to such markets and fairs as are authorised by any local Act (called 'the special Act') which expressly incorporates it⁴, and its clauses apply to the authorised undertakings⁵ subject to any express variations or exceptions in the special Act, and only so far as they are applicable⁶.

1 The expression 'the market or fair' means the market or fair, and the works connected with it, by the special Act authorised to be constructed or regulated: Markets and Fairs Clauses Act 1847 s 3. For the meanings of 'market' and 'fair' generally see PARAS 1001-1002 ante.

2 A public general statute may also do so: see eg the Animal Health Act 1981 s 54(2) (see ANIMALS vol 2 (2008) PARA 1124), which incorporates some provisions of the Markets and Fairs Clauses Act 1847. However, the Food Act 1984 Pt III (ss 50-61) (as amended), which is concerned with markets, does not.

3 See the Markets and Fairs Clauses Act 1847 preamble.

4 See *ibid* s 2. As to access to the special Act see PARA 1012 post.

5 'The undertaking' means the market or fair, and the works connected with it, by the special Act authorised to be construed or regulated: *ibid* s 2.

6 See *ibid* s 1. The effect of an express variation by the special Act is illustrated by *Rutherford v Straker* (1887) 42 ChD 85n; *Hailsham Cattle Market Co v Tolman* [1915] 2 Ch 1 at 8, CA, per Pickford LJ. The incorporation of the Markets and Fairs Clauses Act 1847 s 52 by the special Act incorporates the clauses of the Railways Clauses Consolidation Act 1845 with respect to the recovery of damages not specially provided for, and penalties, and to the determination of any other matter referred to justices. Those provisions now comprise s 140 (as amended), ss 142, 144-145 (as amended), s 154 (as amended), as to which see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 393, 423. As to the incorporation of the clauses as to penalties see PARA 1088 post.

UPDATE

1011 Incorporation of the Markets and Fairs Clauses Act 1847

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(2) CREATION/(ii) Creation by Local Acts/1012. Access to the special Act.

1012. Access to the special Act.

After six months¹ from the passing of the special Act², a Queen's Printer's copy of it must be kept in the principal office of the persons³ authorised to construct or regulate the market or fair⁴, who must also, within that six months' period, deposit a further copy with the proper officer of the local authority for the area⁵. The copies must be available for inspection and the making of extracts or copies, on penalty in default on summary conviction of a fine⁶. Failure to keep or deposit these copies is also an offence punishable with a fine⁷.

1 'Month' means calendar month: Markets and Fairs Clauses Act 1847 s 3.

2 For the meaning of 'the special Act' see PARA 1011 ante.

3 'Person' includes a corporation, whether aggregate or sole: Markets and Fairs Clauses Act 1847 s 3.

4 These persons are known as 'the undertakers': see *ibid* s 2. For the meaning of 'the market or fair' see PARA 1011 note 1 ante. For the meanings of 'market' and 'fair' generally see PARAS 1001-1002 ante.

5 See *ibid* s 58; Courts Act 1971 s 56(1), Sch 8 para 1(2); Local Government Act 1972 s 251(1), Sch 29 para 4(1). See further LOCAL GOVERNMENT vol 69 (2009) PARA 12.

6 See the Markets and Fairs Clauses Act 1847 s 58. The fine must not exceed level 1 on the standard scale: see s 58; and the Local Government Act 1972 s 228(7) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 539), which has replaced the Act referred to in the Markets and Fairs Clauses Act 1847 s 58. 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Powers of Criminal Courts (Sentencing) Act 2000 s 128; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

7 Markets and Fairs Clauses Act 1847 s 59. The fine must not exceed level 2 on the standard scale: s 59 (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). There is a further fine of £5 for every day thereafter during the continuance of the offence: Markets and Fairs Clauses Act 1847 s 59.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(2) CREATION/(ii) Creation by Local Acts/1013. Acquisition of land and construction.

1013. Acquisition of land and construction.

Persons¹ authorised by a local Act incorporating the Markets and Fairs Clauses Act 1847² to construct or regulate a market or fair³ must, if empowered by the special Act⁴ to acquire land⁵ compulsorily for the purpose of constructing the market or fair, exercise that power in conformity with the Lands Clauses Consolidation Act 1845⁶. Errors in descriptions given in the special Act of land or of its owners may be corrected upon application to two justices⁷. In addition to the land which the undertakers are authorised by the special Act to take compulsorily, or to appropriate to the undertaking, they are given a limited power of appropriating land vested in them, or obtained by contract from a willing vendor, for certain 'extraordinary purposes', which include the provision of houses and places for weighing carts⁸ and of roads and approaches to the market or fair, and for any other purpose necessary for its formation or convenient use⁹.

The nature of the works that may be done for constructing the market-place or fair is defined; these works include the building and maintenance of stalls, sheds, pens and other buildings or conveniences for the use of persons frequenting the market or fair, or for weighing and measuring goods, or for weighing carts¹⁰. The undertakers must exercise their powers causing as little damage as may be; and for any damage so done full satisfaction must be made¹¹.

1 As to the meaning of 'person' see PARA 1012 note 3 ante.

2 As to incorporation of the Markets and Fairs Clauses Act 1847 see PARA 1011 ante.

3 For the meaning of 'the market or fair' see PARA 1011 note 1 ante. For the meanings of 'market' and 'fair' generally see PARAS 1001-1002 ante.

4 For the meaning of 'the special Act' see PARA 1011 ante.

5 'Lands' includes messuages, lands, tenements and hereditaments, or heritages, of any tenure: Markets and Fairs Clauses Act 1847 s 3.

6 See *ibid* s 6. As to acquisition under the Lands Clauses Consolidation Act 1845 see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 509 et seq. As to the construction of an Act conferring compulsory powers to take land for a market-place see *Richards v Scarborough Public Market Co* (1853) 23 LJCh 110. The undertakers (see PARA 1012 note 4 ante) must make full compensation to the persons interested in the land taken or used for the purposes of the special Act or injuriously affected by the works authorised by that Act, and for all damage sustained by those persons by the exercise of those powers as to that land; and, except as otherwise provided by the Markets and Fairs Clauses Act 1847 or the special Act, compensation must be determined in the manner provided by the Lands Clauses Consolidation Act 1845: see the Markets and Fairs Clauses Act 1847 s 6.

7 See *ibid* s 7. Certified copies of the alterations and corrections are evidence of their contents: see s 8. 'Justice' means a Justice of the Peace acting for the place where the matter requiring the cognisance of any such justice arises; and if such matter arises in respect of lands situated not wholly in any one jurisdiction, means a justice acting for the place where any part of such lands shall be situated; and where any matter is authorised or required to be done by two justices, the expression 'two justices' is understood to mean two or more justices assembled and acting together: s 3. As to justices of the peace see MAGISTRATES.

8 'Cart' includes wagon, and also any carriage used wholly or chiefly for the conveyance of goods: *ibid* s 3.

9 See *ibid* s 9. See also COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 526.

10 See *ibid* s 10.

11 See *ibid* s 11. See also COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 526.

UPDATE

1013 Acquisition of land and construction

NOTE 7--Definition of 'justice' omitted: Markets and Fairs Clauses Act 1847 s 3 (definition repealed by Courts Act 2003 Sch 8 para 27, Sch 10).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(2) CREATION/(ii) Creation by Local Acts/1014. Opening of market or fair.

1014. Opening of market or fair.

Before a market or fair¹ is opened for public use, not less than ten days' notice of the time when it will be opened must be given in a local newspaper and by handbills conspicuously posted². After the market-place or place for fairs is opened, the persons authorised to construct and regulate the fair³ must hold the markets and fairs in the places so provided⁴.

1 For the meaning of 'the market or fair' see PARA 1011 note 1 ante. For the meanings of 'market' and 'fair' generally see PARAS 1001-1002 ante.

2 See the Markets and Fairs Clauses Act 1847 s 12.

3 Ie the undertakers: see PARA 1012 ante.

4 See the Markets and Fairs Clauses Act 1847 s 14. The markets and fairs must also be held on the proper days: see s 14; and PARA 1068 post.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(2) CREATION/(iii) Creation under Public Acts/1015. Establishment of markets by local authorities under the Food Act 1984.

(iii) Creation under Public Acts

1015. Establishment of markets by local authorities under the Food Act 1984.

A local authority¹ may² establish a market³ within its area⁴, and may provide a market-place with convenient approaches to it⁵, and a market house and other buildings convenient for holding the market⁶ and may acquire land compulsorily for such purposes⁷.

However, a market may not be established so as to interfere with any rights, powers or privileges in the nature of a franchise⁸ enjoyed within the area⁹ in respect of a market by any person, unless that person consents¹⁰.

A local authority which maintains a market¹¹ is a market authority for the purposes of the Food Act 1984¹².

1 For these purposes, 'local authority' means a district council, a London borough council or a parish council but, in relation to Wales, means a county council, county borough council or community council: Food Act 1984 s 61 (definition substituted by the Food Safety Act 1990 s 52, Sch 2 para 11; and amended by the Local Government (Wales) Act 1994 s 22(3), Sch 9 para 14). As to authorities and their areas in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq.

2 A local authority has no power to covenant or agree not to exercise its powers: see *Spurling v Bantoft* [1891] 2 QB 384 at 392, DC, per Cave J.

3 For the meaning of 'market' generally see PARA 1001 ante.

4 Food Act 1984 s 50(1)(a) (amended by the Food Safety Act 1990 Sch 2 para 2).

5 Food Act 1984 s 50(1)(i).

6 Ibid s 50(1)(ii). It may provide cold stores and refrigerators and charge for their use: see s 53(2) (as substituted) (see PARA 1045 post), and s 57A (as added) (see PARA 1100 post).

7 See ibid s 110; and FOOD vol 18(2) (Reissue) PARA 259.

8 *Spurling v Bantoft* [1891] 2 QB 384, DC; *Woolwich Corpn v Gibson* (1905) 92 LT 538. See also *Fearon v Mitchell* (1872) LR 7 QB 690; *Ellis v Bridgnorth Corpn* (1861) 2 John & H 67; *Ellis v Bridgnorth Corpn* (1863) 15 CBNS 52. As to the grant of franchises see PARA 1006 et seq ante.

9 As to the extent of the right of protection from disturbance enjoyed by a franchise holder see PARA 1048 post.

10 Food Act 1984 s 50(2) (amended by the Food Safety Act 1990 Sch 2 para 2). For these purposes, another local authority is not deemed to be enjoying any rights, powers or privileges within another local authority's area by reason only that it has established a market within its own area under the Food Act 1984 s 50(1)(a) (as amended) (see the text to notes 1-4 supra), or under the corresponding provision of any earlier enactment: s 50(3) (substituted by the Food Safety Act 1990 Sch 2 para 2). This does not exclude the common law right of protection against disturbance by the holding of a rival market (see PARA 1052 et seq post), notwithstanding that the rival market lies outside the local authority's area: *Halton Borough Council v Cawley* [1985] 1 All ER 278 (decided under earlier legislation).

11 It is established under the Food Act 1984 s 50(1) (as amended) (see the text to notes 1-6 supra; and PARA 1016 post), or under the corresponding provisions of any earlier enactment: s 61 (definition substituted by the Food Safety Act 1990 Sch 2 para 2). See also PARA 1016 text and note 6 post.

12 Food Act 1984 s 61 (definition substituted by the Food Safety Act 1990 Sch 2 para 2). 'Market authority' also includes: (1) any district council to which such a market is transferred by the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861 (as amended) (art 31; Interpretation Act 1978 s 17(2)(b)), or by the Local Authorities (Wales) (Property etc) Order 1973, SI 1973/1863 (as amended) (art 30; Interpretation Act 1978 s 17(2)(b)); and (2) the Parish Council of Much Wenlock (Local Authorities etc (Miscellaneous Provision) (No 2) Order 1974, SI 1974/595, art 12(3); Interpretation Act 1978 s 17(2)(b)).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(2) CREATION/(iii) Creation under Public Acts/1016. Acquisition of market rights by local authorities under the Food Act 1984.

1016. Acquisition of market rights by local authorities under the Food Act 1984.

A local authority¹ with a power to establish a market² may acquire by agreement, but not otherwise³, either by purchase or on lease, the whole or any part of an existing market undertaking within its area, and any rights, enjoyed by any person within its area in respect of a market and of tolls⁴.

The owner of a market undertaking, or of any rights in respect of a market and of tolls, whether established under, or enjoyed by virtue of, statutory powers or not, may sell or lease to a local authority the whole or any part of his market undertaking or rights, but subject to all liabilities⁵.

A local authority so acquiring a market is a market authority⁶ and may provide a market place with convenient approaches, a market house and other buildings convenient for holding a market⁷.

1 For the meaning of 'local authority' see PARA 1015 note 1 ante

2 Ie under the Food Act 1984 s 50(1)(a) (as amended): see PARA 1015 ante. For the meaning of 'market' see PARA 1001 ante.

3 The power is not extended by the power of compulsory purchase of land in ibid s 110: see s 110; and FOOD vol 18(2) (Reissue) PARA 259.

4 Ibid s 50(1)(b) (amended by the Food Safety Act 1990 s 52, Sch 2 para 2).

5 Food Act 1984 s 51(1). A sale by a company must be authorised (1) if the company is a company within the meaning of the Companies Act 1985 (see COMPANIES vol 14 (2009) PARA 24), by a special resolution of the members passed in the manner provided in Pt XI (ss 348-394A) (as amended); or (2) if the company is not such a company, by a resolution passed by three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened for the purpose with notice of the business to be transacted: Food Act 1984 s 51(2) (amended by the Companies Consolidation (Consequential Provisions) Act 1985 s 20, Sch 2; and the Food Safety Act 1990 s 59(4), Sch 2 para 3, Sch 5).

6 Food Act 1984 s 61 (definition substituted by the Food Safety Act 1990 Sch 2 para 2). See also PARA 1015 note 12 ante.

7 See the Food Act 1984 s 50(1)(i), (ii); and PARA 1015 ante.

UPDATE

1016 Acquisition of market rights by local authorities under the Food Act 1984

NOTE 5--1984 Act s 51(2) further amended: Companies Act 2006 (Commencement No 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007, SI 2007/2194).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(2) CREATION/(iii) Creation under Public Acts/1017. Markets under the Animal Health Act 1981.

1017. Markets under the Animal Health Act 1981.

A wharf or other place provided by a local authority¹ under powers conferred on it by the Animal Health Act 1981² is a market within the Markets and Fairs Clauses Act 1847³ and that Act is incorporated with certain exceptions⁴ with the Animal Health Act 1981⁵.

1 As to the responsible local authorities see the Animal Health Act 1981 s 50 (as amended); and ANIMALS vol 2 (2008) PARA 1121.

2 See under ibid s 54: see ANIMALS vol 2 (2008) PARA 1124.

3 See ibid s 54(3); and ANIMALS vol 2 (2008) PARA 1124.

4 The excepted sections are the Markets and Fairs Clauses Act 1847 ss 6-9 (acquisition of land: see PARA 1013 ante), ss 52, 54 (recovery of damages and penalties: see PARA 1088 post), and ss 58-59 (as amended) (access to the special Act: see PARA 1012 ante): Animal Health Act 1981 s 54(2).

5 Ibid s 54(2).

UPDATE

1017 Markets under the Animal Health Act 1981

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(2) CREATION/ (iv) The London Markets/1018. Creation of the London Markets.

(iv) The London Markets

1018. Creation of the London Markets.

There are three groups of markets¹ in the City of London: (1) Billingsgate² and Leadenhall³ Markets; (2) the London Central Markets⁴; and (3) Spitalfields Market⁵. These markets are all owned and controlled by the Corporation of the City of London⁶ under its various statutes, and the corporation has power to make byelaws under these statutes in respect of every market⁷. The powers of confirming the byelaws are exercised by the Secretary of State⁸.

Outside the City of London the market at Greenwich⁹ and the Borough Market at Southwark¹⁰ are regulated by statute. At Woolwich the right to hold a market in the parish was granted by letters patent¹¹, and has been extended by statute to the whole borough¹². The rights of the former Woolwich Borough Council to maintain the market have been expressly preserved¹³.

Covent Garden Market, originally granted by Charles II to the Earl of Bedford in 1670, was controlled by the Covent Garden Market Company until vested in the Covent Garden Market Authority on 25 March 1962¹⁴. The authority's power to provide market facilities ceased on 14 January 1975¹⁵. The market was transferred to Nine Elms in the London boroughs of Lambeth and Wandsworth¹⁶. The authority was obliged to either develop or dispose of the site of Covent Garden¹⁷.

1 For the meaning of 'market' see PARA 1001 ante.

2 See the Billingsgate Market Acts 1846 and 1871; and the City of London (Various Powers) Act 1920 s 10. Power to extend the market was given by the City of London (Various Powers) Act 1937. See also the City of London (Various Powers) Act 1973 ss 3-6; the City of London (Various Powers) Act 1979 ss 10-17 (as amended); and the City of London (Various Powers) Act 1987 ss 3-5.

3 See the Leadenhall Market Act 1879.

4 See the Metropolitan Meat and Poultry Market Act 1860; and the London Central Markets Act 1875.

5 See the City of London (Spitalfields Market) Act 1902; and the City of London (Various Powers) Act 1920. As to the power to charge tolls etc in respect of markets see the City of London (Various Powers) Act 1963 s 31 (as amended). As to improvements to Spitalfields Market see the City of London (Various Powers) Act 1960 s 16; and the City of London (Various Powers) Act 1961 s 23.

6 As to the Corporation of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 40 et seq.

7 See the statutes cited in notes 2-5 supra.

8 See the Transfer of Functions (Markets) Order 1954, SI 1954/141 (amended by the Food and Drugs Act 1955 s 136, Sch 12), which refers to the Minister of Housing and Local Government. As to the dissolution of the Ministry of Housing and Local Government and the transfer of its functions to the Secretary of State for the Environment see the Secretary of State for the Environment Order 1970, SI 1970/1681 (as amended). From 26 January 1998, the functions of the Secretary of State for the Environment were transferred to the newly created Secretary of State for the Environment, Transport and the Regions: see the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971, arts 2, 3. In June 2001 the functions of the Secretary of State for the Environment, Transport and the Regions relating to environmental matters became the responsibility of a new Secretary of State for Environment, Food and Rural Affairs, and functions relating to local government became the responsibility of a new Secretary of State for Transport, Local Government and the Regions: see No 10 Downing Street Press Release Delivering Effective Government (8 June 2001).

- 9 See the Greenwich Markets Act 1849, which incorporates the Markets and Fairs Clauses Act 1847. The market was owned by the Commissioners of Greenwich Hospital but has now been transferred to the Admiralty: see the Greenwich Hospital Act 1865. As to incorporation of the Markets and Fairs Clauses Act 1847 see PARA 1011 ante.
- 10 See the Borough Market (Southwark) Acts 1754, 1756, 1823, 1829, 1892, 1930, under which the trustees of the market have power to make byelaws.
- 11 16 James I. As to letters patent see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 920.
- 12 Woolwich Borough Council Act 1903 s 4 (as amended).
- 13 See the London County Council (General Powers) Act 1947 s 32 (as amended; prospectively repealed); Local Law (Greater London Council and Inner London Boroughs) Order 1965, SI 1965/540, art 5, Sch 3 (repealed). The Woolwich Borough Council has been abolished and the area of the former borough now lies partly in the inner London borough of Greenwich and partly in the outer London borough of Newham. The London County Council (General Powers) Act 1947 s 32 (as amended; prospectively repealed) must now be construed as referring to those borough councils: see the London Government Act 1963 s 1 (as amended), s 3(1)(b) (repealed), s 87(1), Sch 1. Any rights, duties or privileges vested in, or imposed on, the council of the former metropolitan borough of Woolwich in relation to its markets are not affected by any repeal effected by the Food and Drugs Act 1938 (repealed): see the Food and Drugs Act 1955 s 136(3)(a), Sch 12 Pt II para 6 (repealed), replacing a similar saving in the Food and Drugs Act 1938 s 99 (repealed).
- 14 See the Covent Garden Market Act 1961 s 1(1); Covent Garden Market Authority (Vesting Day) Order 1962, SI 1962/525.
- 15 See the Covent Garden Market Authority (Day of Discontinuance) Order 1974, SI 1974/2117.
- 16 See the Covent Garden Market Act 1966. Trading began on the new site on 11 November 1974.
- 17 See *ibid* s 32. As to the finances and financial duties of the authority see the Covent Garden Market Act 1961; Covent Garden Market (Financial Provisions) Act 1977.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(2) CREATION/ (iv) The London Markets/1019. Storage of containers for horticultural purposes.

1019. Storage of containers for horticultural purposes.

The borough councils¹ may acquire² land for the purpose of providing facilities for the storage, sorting, repair and disposal of containers³ and horticultural produce⁴. The council may erect buildings or adapt existing buildings and equip and manage them for these purposes on any land so acquired⁵, and may make charges for their use⁶ and byelaws for their regulation⁷. The borough council may lease such accommodation to any public authority or any body representative of wholesalers of horticultural produce⁸ in the market area⁹, and may sell or otherwise dispose of the land¹⁰.

When the Minister¹¹ is satisfied that sufficient storage accommodation, whether provided by the council or any other person, is available outside the market area, he may issue a certificate to that effect coming into force three months from the date of issue, and which may be withdrawn when such accommodation is no longer available¹². While a certificate is in force no empty containers¹³ may be kept by horticultural produce wholesalers in the market area unless a licence for doing so has been granted by the borough council¹⁴. The borough council may attach to any such licence such terms and conditions as it thinks fit¹⁵. Any person aggrieved¹⁶ by the borough council's refusal to grant a licence or by any term or condition may appeal within 21 days¹⁷ to a magistrates' court¹⁸, and there is a right of appeal from the decision of the magistrates' court to the Crown Court¹⁹. Persons authorised by the borough council and producing such authorisation may enter premises within the market area to ascertain whether any offence has been committed under these provisions or otherwise for the purpose of exercising the borough council's functions under them²⁰. The borough council is not authorised to sell horticultural produce²¹.

The Corporation of the City of London²² may provide market storage facilities²³ and may for that purpose borrow so much money as it may think requisite²⁴, acquire land compulsorily²⁵ and make byelaws²⁶.

1 The London County Council (General Powers) Act 1959 refers to the London County Council. However, references to the London County Council were substituted for references to the Greater London Council by the Local Law (Greater London Council and Inner London Boroughs Order 1965, SI 1965/540, art 4 Sch 2. The Greater London Council was abolished on 1 April 1986 by the Local Government Act 1985 s 1. Any functions conferred by a local statutory provision which immediately before the abolition date were exercisable by the Greater London Council in or for the benefit of the whole of Greater London are exercisable in or for the benefit of each London borough or the City by the council of that borough or the Common Council, as the case may be: see the Local Government Act 1985 s 17(1)(a).

2 The land may be acquired by agreement or, with the authorisation of the Minister, compulsorily: London County Council (General Powers) Act 1959 s 12(2). The Acquisition of Land Act 1981 applies to such compulsory purchase of land: London County Council (General Powers) Act 1959 s 12(3); Interpretation Act 1978 s 17(2)(a); and see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 556. 'The Minister' means the Minister of Agriculture, Fisheries and Food: London County Council (General Powers) Act 1959 s 11(1). The London County Council (General Powers) Act 1959 refers to the Minister of Agriculture, Fisheries and Food, but since June 2001 the functions of the Ministry of Agriculture, Fisheries and Food have been exercised by the Department for the Environment, Food and Rural Affairs: see No 10 Downing Street Press Release Delivering Effective Government (8 June 2001).

3 'Container' means a barrel, basket, box, cask, crate, keg, sack, tray or other similar receptacle which is, has been or is intended to be used in connection with the transport of horticultural produce: London County Council (General Powers) Act 1959 s 11(1).

- 4 Ibid s 12(1). 'Horticultural produce' means vegetation intended for purposes of decoration, or fruit, vegetables, flowers or plants: s 11(1). The borough council has power of entry for the purpose of surveying or valuing the land (see s 12(4)), but notice must be given (see s 12(4) proviso).
- 5 Ibid s 13(1).
- 6 Ie in accordance with a scale of charges approved by the Minister: ibid s 13(2).
- 7 See ibid s 13(3) (amended by the Food Act 1984 s 134, Sch 10 para 2). The Minister is the confirming authority for such byelaws: London County Council (General Powers) Act 1959 s 13(4).
- 8 References to the sale of horticultural produce by way of wholesale dealing must be construed as references to the sale of such produce to a person who buys for the purpose of selling again: ibid s 11(2).
- 9 Ibid s 14(1). The market area is geographically defined in s 11(1). The borough council may also enter into and carry into effect agreements with such authorities or bodies for the provision, equipment, maintenance and management of the accommodation and for other incidental and consequential matters: s 14(1).
- 10 Ibid s 14(2).
- 11 See note 1 supra.
- 12 London County Council (General Powers) Act 1959 s 15.
- 13 'Empty container' means a container which contains no horticultural produce intended for sale: ibid s 11(1).
- 14 Ibid s 16(1). If within a period of two months from the date of the borough council's receipt of an application for such a licence the borough council has not notified the applicant that the application has been granted, subject or not to terms and conditions (see the text and note 15 infra), or has been refused, the application is deemed to have been refused, at the end of that period: s 16(2). The period may be extended by written agreement: s 16(2) proviso. The penalty for keeping empty containers in the market or for failing to comply with any terms or conditions attached to a licence is, on summary conviction, a fine not exceeding level 1 on the standard scale and a daily fine not exceeding £5: s 16(8) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 1012 note 6 ante. As to where a licence application is made before the certificate comes into force see the London County Council (General Powers) Act 1959 s 16(8) proviso. Section 16 does not apply to any empty container sold or intended to be sold in the ordinary course of business: s 16(9).
- 15 Ibid s 16(3). In considering an application the borough council must have regard to: (1) the subsisting facilities for dealing with fires (including access and escape) and restricting their spread (s 16(3) proviso (i)); (2) the premises construction and their fire resistance (s 16(3) proviso (ii)); (3) the nature of the trade or business carried on in the premises (s 16(3) proviso (iii)); and (4) the facilities required by and available to the applicant for the reception and retention of empty containers for the purpose of carrying on his trade or business (s 16(3) proviso (iv)). The letter or document notifying the borough council's decisions must state the applicant's right to appeal and the time for appeal: see s 16(5).
- 16 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.
- 17 See the London County Council (General Powers) Act 1959 s 16(5).
- 18 Ibid s 16(4).
- 19 Ibid s 16(6); Courts Act 1971 s 8, Sch 1 para 1 (repealed). Where upon any appeal a court varies or reverses any decision of the borough council, the borough council must give effect to the court's order and grant a licence or modify the terms or conditions as may be necessary: London County Council (General Powers) Act 1959 s 16(7).
- 20 Ibid s 17(1). Twenty-four hours' notice must be given to the occupier before entry: s 17(1) proviso. A person refusing admittance is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 17(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46).
- 21 London County Council (General Powers) Act 1959 s 18.
- 22 Ie the mayor and commonalty and citizens of the City acting by the Common Council: see the City of London (Various Powers) Act 1959 s 4(1). As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

23 'Market storage facilities' means facilities for the storage, sorting and disposal of horticultural produce in containers and for the storage, sorting, repair and disposal of containers, but the provision of facilities for the storage, sorting and disposal of horticultural produce on land acquired or used under these powers does not include the provision of facilities for making contracts for the sale or exchange of horticultural produce: *ibid* s 6.

24 See *ibid* s 7.

25 See *ibid* s 8(1). The Minister's authorisation is required (s 8(1)), and the Acquisition of Land (Authorisation Procedure) Act 1946 applies (see the City of London (Various Powers) Act 1959 s 8(2)).

26 See *ibid* s 10 (amended by the Food Act 1984 s 134, Sch 10 para 1; and the Local Law (City of London) Order 1965, SI 1965/508, art 4, Sch 2).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(2) CREATION/ (iv) The London Markets/1020. Temporary markets.

1020. Temporary markets.

The council of a district or a London borough¹ may resolve that the following provisions² are to apply to its district or borough; and if a council so resolves and within 14 days of the passing of the resolution gives notice of the resolution by advertising it in a local newspaper circulating in its area, the provisions will come into force in its district or borough on the day specified in the resolution³.

Any person intending to hold a temporary market⁴ in a district or London borough⁵, and any occupier of land in such a district or borough who intends to permit the land to be used as the site of a temporary market or for purposes of that market, must give the council of the district or borough, not less than one month before the date on which it is proposed to hold the market, notice of his intention to hold it or to permit the land to be so used, as the case may be⁶. No such notice is required if the proceeds of the temporary market are to be applied solely or principally for charitable, social, sporting or political purposes⁷. Any such notice given must state: (1) the full name and address of the person intending to hold the market⁸; (2) the day or days on which it is proposed that the market is to be held and its proposed opening and closing times⁹; (3) the site on which it is proposed that it is to be held¹⁰; and (4) the full name and address of the occupier of that site, if he is not the person intending to hold the market¹¹. A person who, without giving the required notice, holds a temporary market or permits land occupied by him to be used as the site of a temporary market is guilty of an offence and liable on summary conviction to a fine¹².

1 As to the London boroughs see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 35 et seq.

2 I.e. the Local Government (Miscellaneous Provisions) Act 1982 s 37 (as amended). Section 37 (as amended) does not apply to a market held on any land in accordance with planning permission granted on an application made under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 217 et seq); Local Government (Miscellaneous Provisions) Act 1982 s 37(8) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 56(2)).

3 Local Government (Miscellaneous Provisions) Act 1982 s 37(1). As to authorities and their areas in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq.

4 A person holds a temporary market if he is entitled to payment for any space or pitch hired or let on the site of the market to persons wishing to trade in the market, or he is entitled, as a person promoting the market, or as the agent, licensee or assignee of a person promoting the market, to payment for goods sold or services rendered to persons attending the market: *ibid* s 37(7). For these purposes, 'temporary market' means a concourse of buyers and sellers of articles held otherwise than in a building or on a highway, and comprising not less than five stalls, stands, vehicles (whether movable or not) or pitches from which articles are sold, but does not include a market or fair the right to hold which was acquired by virtue of a grant, including a presumed grant, or acquired or established by virtue of an enactment or order, or a sale by auction of farm livestock or deadstock: s 37(6). For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante. As to the creation of markets and fairs see PARA 1004 et seq ante.

5 I.e. in a district or London borough where *ibid* s 37 (as amended) has come into force: s 37(2).

6 *Ibid* s 37(2).

7 *Ibid* s 37(3).

8 *Ibid* s 37(4)(a).

9 *Ibid* s 37(4)(b).

10 Ibid s 37(4)(c).

11 Ibid s 37(4)(d).

12 Ibid s 37(5). The fine must not exceed level 4 on the standard scale: s 37(5) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see [PARA 1012](#) note 6 ante.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(3) RIGHTS AND LIABILITIES/1021. Rights and duties of the owner in the holding of the market.

(3) RIGHTS AND LIABILITIES

1021. Rights and duties of the owner in the holding of the market.

A right to hold a market¹ involves the following rights and duties on the part of the owner.

- 1 (1) A right of having a concourse of buyers and sellers for the buying and selling of the commodities vendible in the market². This right may justify a concourse which, but for the right, would be liable to be put down as a nuisance³.
- 2 (2) A right of action against persons who unlawfully dispute or interfere with the lawful holding of the market or the collection of its profits⁴.
- 3 (3) The right to direct in what part of the market the various commodities are to be sold, for he has the general direction of the market, but he is bound to appropriate the whole space of the market if the public convenience requires it⁵.
- 4 (4) A duty to provide a place for the holding of the market, of a size sufficient for the convenient accommodation of all who are ready to buy and sell in the market⁶. If the owner's rights are limited to the holding of his market in a fixed spot defined by metes and bounds, his duty is to devote to the accommodation of the public so much of that spot as the public's convenience requires⁷. He is not under a duty to provide stalls or pens, but if he does so, he may not cover the place with stalls so as to compel the public to take stalls⁸.
- 5 (5) The right to remove the market to a new place, provided that he keeps to the limits within which the market may lawfully be held⁹.

1 For the meaning of 'market' see PARA 1001 ante.

2 *Marquis of Downshire v O'Brien* (1887) 19 LR Ir 380 at 390 per Chatterton V-C.

3 *Elwood v Bullock* (1844) 6 QB 383 at 411, DC, per Lord Denman CJ; and see PARA 1077 post. As to the law of nuisance generally see NUISANCE.

4 See PARAS 1048-1057 post.

5 *Prince v Lewis* (1826) 5 B & C 363 at 374 per Littledale J; *London Corpn v Lyons, Son & Co (Fruit Brokers) Ltd* [1936] Ch 78, CA. As to the rights and duties of the market authority imposed by statute see PARA 1085 et seq post. As to his remedies for disturbance see PARA 1048 et seq post.

6 *Re Islington Market Bill* (1835) 3 Cl & Fin 513 at 518, HL. As to forfeiture for not holding a market see PARA 1060 post. As to certain duties imposed by statute see eg the provision for weighing cattle (see PARA 1103 post), and provision for furnishing accounts (see PARA 1101 post). A local authority has power to contract with any person for lighting markets, and may provide such lamps, lamp posts and other materials and apparatus as may be necessary for the purpose: see the Public Health Act 1875 s 161 (as amended); the Gas Act 1948 s 76, Sch 4 (repealed); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 539 et seq.

7 *Re Islington Market Bill* (1835) 3 Cl & Fin 513 at 519 per Littledale J.

8 See PARA 1039 post. He is liable for the safe condition of the stalls or pens (*Lax v Darlington Corpn* (1879) 5 Ex D 28, CA; *Brackenborough v Spalding UDC* [1942] AC 310, [1942] 1 All ER 34, HL), but he is not liable to the owner of the animals or to the public in the market or at large for injury by the escape of animals from pens (*Brackenborough v Spalding UDC* supra).

9 See PARA 1080 post.

UPDATE

1021 Rights and duties of the owner in the holding of the market

NOTE 2--See *R (on the application of Corpn of London) v Secretary of State for Environment, Food and Rural Affairs* [2006] UKHL 30, [2006] 3 All ER 1130.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(3) RIGHTS AND LIABILITIES/1022. Transfer of market by owner.

1022. Transfer of market by owner.

A deed is generally necessary for the transfer or lease of a franchise market or fair¹ or of franchise tolls as, being incorporeal hereditaments², they pass only by deed³. A franchise market does not usually pass by the conveyance or demise of the market-place, for the market and the market-place are distinct properties⁴. However, exceptions to these rules may arise on the construction of a local Act⁵.

A public body does not possess the power to convey or demise market rights vested by statute in it, not for its own benefit, but for the benefit of the public, unless such power has been conferred by statute⁶.

District councils have no power to transfer or lease the statutory market rights which they exercise under the Food Act 1984⁷, nor may they make a valid covenant not to exercise them⁸.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante. As to franchise see PARAS 1001-1003 ante.

2 As to the nature of incorporeal hereditaments generally see REAL PROPERTY vol 39(2) (Reissue) PARA 81; LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 17.

3 Co Litt 9a, 49a, 169a; *Duke of Somerset v Fogwell* (1826) 5 B & C 875; and see generally DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 9 et seq; LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 17. 'Fairs and markets are grantable over from man to man, in fee, for life, or years, in infinitum': Shep Touch (7th Edn) 240. On the death of the owner of a franchise market or fair it passes to his personal representative as real estate: see the Administration of Estates Act 1925 ss 1(1), (3), 3(1) (as amended); and EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 363 et seq.

4 See *A-G v Horner* (1884) 14 QBD 245 at 254, CA, per Brett MR; affd (1885) 11 App Cas 66, HL. If a franchise market is leased at a sum reserved in the nature of rent, the amount due under the reservation is recoverable by action, but not by distress (Co Litt 47a; 7 Bac Abr, Rent (B); *Jewel's Case* (1588) 5 Co Rep 3a; *Gardiner v Williamson* (1831) 2 B & Ad 336; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 103), unless the Crown is the lessor, in which case the amount due under the reservation may be distrained for upon any land of the lessee (*Lord Montjoy's Case* (1583) 5 Co Rep 3b at 4a, 4b; *Knight's Case* (1588) 5 Co Rep 54b at 56a; Chitty's Prerogatives of the Crown 208-209). The lessee's covenant to pay binds his assignee: *Earl of Egremont v Keene* (1837) 2 Jo Ex Ir 307; *Earl of Lucan v Gildea* (1831) 2 Hud & B 635.

5 *Bridgland v Shapter* (1839) 5 M & W 375, where it was held that the local Act vested the right to the tolls in the plaintiff who held the market buildings under a parol demise.

6 See *Haynes v Ford* [1911] 1 Ch 375 at 385 per Neville J (affd [1911] 2 Ch 237, CA); *Tepper v Nichols* (1864) 34 LJCP 61 at 67 per Erle CJ; *Gardner v London, Chatham and Dover Rly Co*, *Drawbridge v London, Chatham and Dover Rly Co*, *Gardner v London, Chatham and Dover Rly Co (No 2)*, *Imperial Mercantile Credit Association v London, Chatham and Dover Rly Co (No 2)* (1867) 2 Ch App 201 at 212 per Cairns LJ; *Re Salisbury Railway and Market House Co Ltd* [1969] 1 Ch 349, [1967] 1 All ER 813; and see generally COMPANIES vol 14 (2009) PARAS 252-254; CORPORATIONS vol 9(2) (2006 Reissue) PARAS 1230-1243.

7 See PARAS 1015-1016 ante.

8 *Spurling v Bantoft* [1891] 2 QB 384 at 392, DC, per Cave J. The point that there was no power to lease the market tolls was not raised in *Kidderminster Corp'n v Hardwick* (1873) LR 9 Exch 13. As to the disposal of land by principal councils see the Local Government Act 1972 s 123 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 515.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(3) RIGHTS AND LIABILITIES/1023. Transfer of powers by public bodies.

1023. Transfer of powers by public bodies.

Any of the functions of any trustees, commissioners or other persons who, for public purposes and not for profit, act under any enactment or instrument for providing or maintaining a market¹ in any place² may, with the approval of the public body, be transferred by order of the Secretary of State³ to any local authority⁴ whose area comprises the district of that body, or jointly to two or more local authorities whose areas together comprise that district⁵.

1 For the meaning of 'market' see PARA 1001 ante.

2 See the Local Government Act 1972 s 253(2).

3 In law 'Secretary of State' means one of Her Majesty's Principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. The office of Secretary of State is a unified office and in law each Secretary of State is capable of performing the functions of all or any of them. Accordingly, many modern statutes refer simply to 'the Secretary of State' without reference to a particular department or ministry. As to the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355. In relation to Wales, the functions of the Secretary of State under the Local Government Act 1972 are carried out by the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

4 'Local authority' means a county council, a district council, a London borough council, or a parish council but, in relation to Wales, means a county council, county borough council or community council, or, in this context, the Common Council of the City of London: Local Government Act 1972 ss 253(4), 270(1) (definition amended by the Local Government Act 1985 s 102, Sch 16 para 8, Sch 17; and the Local Government (Wales) Act 1994 s 1(5)). As to authorities and their areas in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

5 Local Government Act 1972 s 253(1). The order may contain incidental, consequential, transitional and supplementary provisions, and is subject to annulment in pursuance of a resolution of either House of Parliament: s 253(3). See further LOCAL GOVERNMENT vol 69 (2009) PARA 11. The trustees under any local Act for the providing or maintaining of a market in or for any place, whether or not their powers under the Act extend beyond that place, may transfer to the local authority for that place, with its consent, all the rights, powers, estates, property and liabilities vested in or imposed on them under the local Act: see the Municipal Corporations Act 1882 s 136. The effect of the transfer is to make the local authority the trustee for executing the powers and provisions of the local Act and to discharge the transferring trustees from their liabilities and obligations under it. The former power under s 136 for trustees of a market to transfer it to the municipal corporation of a borough has become obsolescent by virtue of the Local Government Act 1972 ss 1(11), 245(5): see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 25.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(3) RIGHTS AND LIABILITIES/1024. Public's right to attend a market.

1024. Public's right to attend a market.

At all times when a market¹ ought lawfully to be held, every member of the public² has, of common right, the liberty to enter and frequent the market-place for the purpose of bringing there and exposing for sale and selling, or of buying, such commodities as are vendible in the market³.

However, this common right does not entitle any person to take exclusive occupation of any part of the market-place, such as by erecting a stall⁴, but it does entitle him, on payment of the dues, to fix the conditions on which he will sell his goods⁵.

1 For the meaning of 'market' see PARA 1001 ante.

2 This includes an auctioneer wishing to exercise his calling in the market: *London Corpn v Lyons, Son & Co (Fruit Brokers) Ltd* [1936] Ch 78, CA; and see *R v Barnsley Metropolitan Borough Council, ex p Hook* [1976] 3 All ER 452, [1976] 1 WLR 1052, CA.

3 *Austin v Whittred* (1746) Willes 623; *Townend v Woodruff* (1850) 5 Exch 506; *Duke of Newcastle v Worksop UDC* [1902] 2 Ch 145 at 159 per Farwell J; and see *R v Barnsley Metropolitan Borough Council, ex p Hook* [1976] 3 All ER 452, [1976] 1 WLR 1052, CA. The owner of goods which have been wrongfully abstracted from him may lawfully seize them to his own use if he finds them in a fair (3 Bl Com (14th Edn) 4, cited in *Anthony v Haney* (1832) 8 Bing 186 at 192 per Tindal CJ) and therefore, apparently, has a right of entry into the fair for the purpose of seeking for them. For the meaning of 'fair' see PARA 1002 ante. As to estrays being proclaimed in markets see Dalton's Office and Authority of Sheriffs (1700) 79; Com Dig, Waife (F); 1 Bl Com (14th Edn) 297; and CROWN PROPERTY vol 12(1) (Reissue) PARA 372. Goods brought to market may not be distrained for rent of the market-place: Co Litt 47a. As to the exemption of cattle on their way to market from distress for rent while they are pasturing for one night see DISTRESS vol 13 (2007 Reissue) PARA 936. The rights referred to do not extend to the transferred Covent Garden Market at Nine Elms: see the Covent Garden Market Act 1966 s 30; and PARA 1018 ante.

4 *Northampton Corpn v Ward* (1745) 2 Stra 1238; *Norwich Corpn v Swann* (1776) 2 Wm Bl 1116; *Yarmouth Corpn v Groom* (1862) 1 H & C 102; *Brandon v Barnes* [1966] 3 All ER 296, [1966] 1 WLR 1505, DC. As to stallage see PARA 1036 post. As to exclusive occupation see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 6.

5 Eg he may sell the goods by auction: *Scott v Glasgow Corpn* [1899] AC 470 at 490, HL, per Lord Shand; *Nicholls v Tavistock UDC* [1923] 2 Ch 18; *London Corpn v Lyons, Son & Co (Fruit Brokers) Ltd* [1936] Ch 78, CA. For the power to regulate by byelaw the place of sale by auction see also PARA 1086 note 5 post. As to auction generally see AUCTION.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(3) RIGHTS AND LIABILITIES/1025. Acquisition of title by buyer.

1025. Acquisition of title by buyer.

Where there is a contract for the sale¹ of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred². The completion of a sale confers on the buyer in respect of the goods all the rights and liabilities³ of an owner. He is invested with full powers of using or of dealing with the goods⁴, is entitled to all accretions and benefits attaching to them⁵, and is subject to the risk of loss or damage⁶.

1 As to contracts of sale see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 27 et seq. As to contracts generally see CONTRACT.

2 See the Sale of Goods Act 1979 s 17; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 112.

3 *White v Crisp* (1854) 10 Exch 312.

4 *Betts v Willmott* (1871) 6 Ch App 239 at 245, CA, per Lord Hatherley LC; *Ajello v Worsley* [1898] 1 Ch 274.

5 *Sweeting v Turner* (1871) LR 7 QB 310 at 313 per Blackburn J; *The Vindobala* (1887) 13 PD 42 (revsd on other grounds (1889) 14 PD 50, CA). See also *Black v Homersham* (1878) 4 Ex D 24 (dividend on shares declared before transfer).

6 See the Sale of Goods Act 1979 s 20; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 142.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(3) RIGHTS AND LIABILITIES/1026. Abolition of doctrine of market overt.

1026. Abolition of doctrine of market overt.

The Sale of Goods (Amendment) Act 1994¹ finally abolished the ancient common law doctrine of market overt². The rule provided that where goods, other than goods belonging to the Crown³, were sold in market overt⁴ according to the usage of the market⁵, the buyer acquired a good title to the goods, provided that he bought them in good faith⁶ and without notice⁷ of any defect or want of title on the part of the seller⁸. However, the title was liable to be defeated in the case of stolen goods⁹. The rule was for the protection of the buyer, and the seller was not protected by it and an action for wrongful interference with goods lay in conversion against one who wrongfully sold and delivered the goods of another in market overt¹⁰. If, after a sale¹¹ in market overt, the seller became again the owner of the goods, the title in the original owner revived¹². The rule of market overt did not apply in Scotland or Wales¹³. By the custom of the City of London, of which judicial notice was taken¹⁴, that part of every shop¹⁵ within the City¹⁶ to which the public is admitted without special invitation¹⁷ was market overt, between sunrise and sunset on all days except Sundays and holidays, for the sale by the shopkeeper of such goods as he professed to trade in¹⁸.

The reasoning behind the abolition of the rule was that in modern conditions, where the population is no longer dependant upon local markets for commerce and when goods of all kinds stolen at lunchtime may be several hundred miles away by sundown, the rule had no useful social purpose, and that it only served to assist thieves in the disposition of stolen goods¹⁹:

1 Ie the Sale of Goods (Amendment) Act 1994 s 1.

2 The common law doctrine of market overt had been enacted in the Sale of Goods Act 1893 s 22(1) (repealed) and was re-enacted in the Sale of Goods Act 1979 s 22(1) (repealed by the Sale of Goods (Amendment) Act 1994 s 1).

3 2 Co Inst 713; *Willion v Berkley* (1561) 1 Plowd 223 at 243.

4 The place where the goods were sold must have been a public and legally constituted market (*Lee v Bayes and Robinson* (1856) 18 CB 599) or fair (*Comyns v Boyer* (1596) Cro Eliz 485; 2 Co Inst 713), and a modern statutory market was within the rule as to sale in market overt: *Ganby v Ledwidge* (1876) 10 CL 33; *Delaney v Wallis & Sons* (1884) 14 LR Ir 31, CA; *Bishopsgate Motor Finance Corp Ltd v Transport Brakes Ltd* [1949] 1 KB 322, [1949] 1 All ER 37, CA; *Reid v Metropolitan Police Comr* [1973] QB 551, [1973] 2 All ER 97, CA.

5 For the meaning of 'market' see PARA 1001 ante.

6 Ie honestly, whether negligently or not: Sale of Goods Act 1979 s 61(3).

7 Ie knowledge, whether actual or imputed by reason of the means of knowledge, being wilfully disregarded: see *May v Chapman* (1847) 16 M & W 355 at 361 per Parke B; *Jones v Gordon* (1877) 2 App Cas 616, HL.

8 See the Sale of Goods Act 1893 s 22(1) (repealed: see note 2 supra). For a statement of the common law rule on which this provision is based see *Cundy v Lindsay* (1878) 3 App Cas 459 at 463, HL, per Lord Cairns LC. See also 2 Co Inst 713-714. As to sale of goods generally see SALE OF GOODS AND SUPPLY OF SERVICES.

9 See PARA 1027 post.

10 *Peer v Humphrey* (1835) 2 Ad & El 495; *Delaney v Wallis & Sons* (1884) 14 LR Ir 31, CA; and see the Torts (Interference with Goods) Act 1977 s 1 (as amended); and TORT vol 45(2) (Reissue) PARA 545 et seq.

11 For a sale to have constituted a sale in market overt according to the usage of the market conditions had to be fulfilled and the burden of proof that a sale was contrary to the usage of the market lay on the party seeking to set aside the sale: *Comyns v Boyer* (1596) Cro Eliz 485; *Bishopsgate Motor Finance Corpn Ltd v Transport Brakes Ltd* [1949] 1 KB 322, [1949] 1 All ER 37, CA; *Reid v Metropolitan Police Comr* [1973] QB 551, [1973] 2 All ER 97, CA. The conditions which had to be fulfilled were that: (1) the sale be made in the usual market-place or place for the fair, upon the lawful day, and during the usual hours for holding the market or fair, and not at night (2 Co Inst 714); (2) the goods must have been exposed for sale, and the whole transaction of sale and delivery must have been begun and concluded, openly in the market or fair (2 Co Inst 713; *Crane v London Dock Co* (1864) 5 B & S 313; *Hill v Smith* (1812) 4 Taunt 520 at 533, Ex Ch, per Mansfield CJ; *Reid v Metropolitan Police Comr* supra); the sale need not necessarily have been by a trader and a private sale at a market where goods are usually sold by auction is not contrary to the usage of the market (*Bishopsgate Motor Finance Corpn Ltd v Transport Brakes Ltd* supra); (3) the sale must have been a real sale by a person of contractual capacity (2 Co Inst 713); (4) the goods must have been goods of a kind which were vendible in the market or fair and which the vendor was offering there ostensibly (2 Co Inst 713; and see *Market-Overt Case* (1596) 5 Co Rep 83b); (5) if toll was payable on the sale of the goods, it must have been paid (2 Co Inst 713); but in toll free markets or fairs the property passed without payment of toll (*Comyns v Boyer* supra). If non-payment of toll was relied upon as avoiding the sale, the burden of proving that toll was payable and not paid lay on the party who sought to avoid the sale: *Comyns v Boyer* supra; see also *Bishopsgate Motor Finance Corpn Ltd v Transport Brakes Ltd* supra at 330 and 41 per Bucknill LJ, at 335 and 45 per Singleton LJ, and at 337 and 46 per Denning LJ.

12 2 Co Inst 713.

13 Laws in Wales Act 1542 s 47 (repealed); Sale of Goods Act 1893 s 22(3) (repealed). However, a title acquired in England or Ireland was recognised in Scotland: *Todd v Arnsur* 1882 9 R 901, Ct of Sess.

14 See the *Market-Overt Case* (1596) 5 Co Rep 83b; *Lyons v De Pass* (1840) 11 Ad & El 326.

15 The custom did not extend to a wharf: *Wilkinson v King* (1809) 2 Camp 335.

16 The custom of London is confined to the City: *Anon* (1701) 12 Mod Rep 521.

17 *Hargreave v Spink* [1892] 1 QB 25. It was not necessary that the premises should be sufficiently open to the street for a person outside to see what passes within: *Lyons v De Pass* (1840) 11 Ad & El 326. In *Clayton v Le Roy* [1911] 2 KB 1031 at 1044 per Scrutton J (on appeal [1911] 2 KB 1031, CA) it was held that an auction room used for periodical sales of unredeemed pledges was not a shop within the custom; and see *Reid v Metropolitan Police Comr* [1973] QB 551, [1973] 2 All ER 97, CA.

18 *Market-Overt Case* (1596) 5 Co Rep 83b; *Taylor v Chambers* (1605) Cro Jac 68; 2 Bl Com 449. The sale had to be of goods of the same kind as were usually sold in the shop: *Lyons v De Pass* (1840) 11 Ad & El 326. The custom was successfully pleaded in *Prior of Lantory v--* (1472) YB 12 Edw 4, fo 8, pl 22. It is fully discussed in *Hargreave v Spink* [1892] 1 QB 25. In *Clifton v Chancellor* (1600) Moore KB 624, a similar custom was pleaded for sales in shops at Bristol. The custom did not extend to pawning (*Hartop v Hoare* (1743) 1 Wils 8), or to sales to a shopkeeper (*Ardath Tobacco Co Ltd v Ocker* (1930) 47 TLR 177).

19 See 551 HL Official Report (5th series), 12 January 1994, cols 209-223.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(3) RIGHTS AND LIABILITIES/1027. Effect of conviction on title to property.

1027. Effect of conviction on title to property.

Notwithstanding any enactment to the contrary, where property has been stolen or obtained by fraud or other wrongful means, the title to that or any other property is not affected by reason only of the offender's conviction¹. The court by or before which the offender is convicted may make orders for restitution by which the owner may recover his goods². Where the court makes an order for the restoration of any goods³, it may order that a sum not exceeding the value of the original goods be paid to any person entitled to recover the goods from the person convicted out of any money taken out of his possession on his apprehension⁴. If the buyer of stolen goods incurs cost in keeping them before the conviction, he has no claim against the owner after the conviction for such cost⁵.

1 Theft Act 1968 s 31(2).

2 See the Powers of Criminal Courts (Sentencing) Act 2000 s 148; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 388.

3 ie an order under *ibid* s 148(2)(a): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 388.

4 See *ibid* s 148(2)(c); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 388.

5 *Walker v Matthews* (1881) 8 QBD 109, where a cow had been stolen and had calved before the thief's conviction, and the owner recovered the calf as well as the cow.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(i) Tolls/1028. Nature of toll.

(4) TOLLS, STALLAGES AND PROFITS

(i) Tolls

1028. Nature of toll.

Toll in the more limited sense¹ of franchise toll is a sum payable by the buyer² upon sales of tollable articles in a market or fair³. By custom or statute there may be dues, in the nature of franchise tolls, payable on goods brought into a market for sale, whether sold or not⁴; and these are in some cases payable in kind⁵. Toll cannot be payable, unless by statute, on goods not actually brought into the market for sale⁶. Accordingly, no toll can be payable by grant or prescription on the bulk of goods sold by sample in a market, when the sample only is actually brought into the market⁷.

1 'Toll' does not strictly include stallage (*Norhampton Corpn v Ward* (1745) 2 Stra 1238), but may be interpreted to include stallage in Acts of Parliament, grants and pleadings (*Duke of Bedford v Emmett* (1820) 3 B & Ald 366 at 371 per Bayley J; *Bennington v Taylor* (1700) 2 Lut 1517; *Lockwood v Wood* (1841) 6 QB 31). As to stallage see PARA 1036 post.

2 *Leight v Pym* (1686) 2 Lut 1329; 2 Co Inst 221. By custom, prescription or individual contract (*A-G v Horner (No 2)* [1913] 2 Ch 140, CA) or by statute, toll may be payable by the seller: see the Food Act 1984 s 54(3); and PARA 1045 post; and *Hailsham Cattle Market Co v Tolman* [1915] 1 Ch 360; affd [1915] 2 Ch 1, CA. See also *Quo Warranto*, Rolls, 146 (4 Edw 3), Meysham Market, where tolls taken from the seller were admitted to be against common law. As to the meaning and character of custom see CUSTOM AND USAGE vol 12(1) (Reissue) PARA 601 et seq.

3 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

4 *Hill v Hawkur* (1614) Moore KB 835; *Duke of Bedford v Emmett* (1820) 3 B & Ald 366 at 371 per Bayley J. See also *R v Casswell* (1872) LR 7 QB 328; *London Corpn v St Sepulchre, London, Overseers* (1871) LR 7 QB 333n.

5 *Specot v Carpenter* (1682) T Jo 207; *Norman v Bell* (1831) 2 B & Ad 190; and see PARA 1039 post. Wrongful interference with goods (formerly trover) lies for taking too much: *Norman v Bell* supra; *Hickman's Case* (1599) Noy 37; *Hill v Hawkur* (1614) Moore KB 835; and see the Torts (Interference with Goods) Act 1977 s 1 (as amended); and TORT vol 45(2) (Reissue) PARA 545.

6 *Kerby v Whichelow* (1700) 2 Lut 1498 at 1502 per Powell J; *Wells v Miles* (1821) 4 B & Ald 559. Where a statute authorises the payment of tolls for the use of the market and in respect of animals and things brought into the market, tolls are not payable on things sold outside the market in respect of which the market authority renders no service: *Londonderry Corpn v Osborne* [1926] NI 58, CA.

7 *Wells v Miles* (1821) 4 B & Ald 559; *Hill v Smith* (1812) 4 Taunt 520, Ex Ch. See also *Moseley v Pierson* (1790) 4 Term Rep 104.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(i) Tolls/1029. Acquisition of right to toll.

1029. Acquisition of right to toll.

The right to toll¹ has been described as a subordinate franchise appurtenant to a franchise of market or fair². It may be acquired by (1) express grant from the Crown³; (2) statute; or (3) prescription or long usage from which a lost grant may be presumed⁴. Unless the right can be established in one of these ways, no toll is payable⁵. It is said that the Crown cannot grant a new toll in an existing market without some proportionable benefit to the subject⁶.

1 As to the nature of toll see PARA 1028 ante.

2 *Duke of Newcastle v Worksop UDC* [1902] 2 Ch 145 at 156 per Farwell J. See also PARA 1060 note 9 post. For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante. As to franchise see PARAS 1001-1003 ante.

3 *Stamford Corpn v Pawlett* (1830) 1 Cr & J 57; affd sub nom *Pawlett v Stamford Corpn* (1831) 1 Cr & J 400, Ex Ch.

4 *Wright v Bruister* (1832) 4 B & Ad 116. See also PARA 1008 ante.

5 *R v Maidenhead Corpn* (1620) Palm 76; 2 Co Inst 220-221; *Duke of Newcastle v Worksop UDC* [1902] 2 Ch 145.

6 2 Co Inst 220; *Lancum v Lovell* (1832) 6 C & P 437 at 465 per Tindal CJ; *Lowden v Hierons* (1817) Holt NP 647; subsequent proceedings (1818) 2 Moore CP 102 at 108 per Park J.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(i) Tolls/1030. Effect of use of general words in grant.

1030. Effect of use of general words in grant.

General words in a grant are not sufficient to create a right to toll¹; but in a confirmatory grant of an old market², or a regrant of a market after it has passed by forfeiture or otherwise into the hands of the Crown, general words are sufficient to continue a right to toll which had previously existed³. A grant of toll by that name is sufficient, even though the amount, or the particular articles on which it is to be payable, are not specified⁴. A general grant of toll without specifying the amount is interpreted as a grant of a reasonable toll⁵, and a grant in that form enables the grantee to vary the amount taken from time to time, provided it is always reasonable⁶.

1 Such words as 'profits', 'commodities', 'emoluments' or 'free customs belonging to a fair' are insufficient: *Heddy v Wheelhouse* (1597) Cro Eliz 558 at 591 per Popham J; *Earl Egremont v Saul* (1837) 6 Ad & El 924 at 931 per Lord Denman CJ; *Holloway v Smith* (1742) 2 Stra 1171. See also *Lightfoot v Lenet* (1617) Cro Jac 421, where a grant of 'such toll as is used to be taken ibi et alibi infra regnum Angliae' was held void for ambiguity.

2 For the meaning of 'market' see PARA 1001 ante.

3 See *Heddy v Wheelhouse* (1597) Cro Eliz 558 at 591 per Popham J; *Earl of Egremont v Saul* (1837) 6 Ad & El 924; *R v Maidenhead Corpn* (1620) Palm 76 at 82.

4 *Stamford Corpn v Pawlett* (1830) 1 Cr & J 57, Ex Ch; *R v Maidenhead Corpn* (1620) Palm 76.

5 *R v Maidenhead Corpn* (1620) Palm 76.

6 *Lawrence v Hitch* (1868) LR 3 QB 521 at 533, Ex Ch, per Kelly CB.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(i) Tolls/1031. Extent of toll claimed by prescription or lost grant.

1031. Extent of toll claimed by prescription or lost grant.

If toll is claimed by prescription or presumed lost grant, the court may, if the evidence of user so warrants, find either that the grant was of a reasonable toll, or that it was of a toll of specified amount¹.

¹ *Wright v Bruister* (1832) 4 B & Ad 116; *Lawrence v Hitch* (1868) LR 3 QB 521, Ex Ch. If the maximum is reasonable it is lawful to make a smaller charge to individuals: *Duke of Bedford v Emmett* (1820) 3 B & Ald 366.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(i) Tolls/1032. Toll must be reasonable.

1032. Toll must be reasonable.

A grant of toll is void if it is of an unreasonable amount¹. Reasonableness is a question of law², and the court will support the payment of tolls in accordance with an express grant or with long usage unless they are shown to be unreasonable³. A continuance of uniform payment and acquiescence in it tends to show that the toll is reasonable⁴.

1 2 Co Inst 220; *Heddy v Wheelhouse* (1597) Cro Eliz 558.

2 2 Co Inst 222; *Lowden v Hierons* (1818) 2 Moore CP 102 at 113.

3 *Wright v Bruister* (1832) 4 B & Ad 116; and see *Mills v Colchester Corp* (1868) LR 3 CP 575, Ex Ch.

4 *Wright v Bruister* (1832) 4 B & Ad 116; and see *Mills v Colchester Corp* (1868) LR 3 CP 575, Ex Ch.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(i) Tolls/1033. Recovery of tolls.

1033. Recovery of tolls.

Except when required by statute, a market owner is not bound to publish a list of his tolls and charges¹. Unpaid toll creates a debt recoverable by action without proof of an express contract to pay².

The owner of a market or fair may prescribe to distrain the goods, or a reasonable part of the goods, in respect of which the toll is payable, after demand of the toll and refusal to pay³.

1 *A-G v Horner (No 2)* [1913] 2 Ch 140, CA. In markets to which the Markets and Fairs Clauses Act 1847 s 41 applies, the list must be set up on boards in the market or fair: see PARA 1044 post. See also the Food Act 1984 s 53 (as amended); and PARA 1045 post. For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 *Newport Corpn v Saunders* (1832) 3 B & Ad 411 at 412 per Lord Tenterden CJ. The claimant must prove that he is entitled to receive the tolls, ie that he is in possession of the market or fair and the tolls: see *Tewkesbury Corpn v Diston* (1805) 6 East 438. For a form of indebitatus count see *Duke of Bedford v Emmett* (1820) 3 B & Ald 366; *Reading Corpn v Clarke* (1821) 4 B & Ald 268. A county court has no jurisdiction in any action in which the title to any toll, fair, market or franchise is in question: see the County Courts Act 1984 s 15(1), (2)(b) (as amended).

3 *Agar v Lisle* (1613) Hob 187. It is said that the right to distrain is incident to every toll and need not be specially prescribed: *Whitstable Free Fishers and Dredgers Co v Gann* (1861) 11 CBNS 387 at 416 per Erle CJ; Gilbert's Law and Practice of Distress and Replevin (4th Edn) 18-19; Gunning's Law of Tolls (1833) 216-217. This is probably correct, but the authorities are not clear: see *London Corpn v Lynn Regis Corpn* (17960 1 Bos & P 487; *Hickman's Case* (1599) Noy 37; *Harris v Hawkins* (1662) 1 Keb 342; *Leight v Pym* (1686) 2 Lut 1329 at 1336; *Bennington v Taylor* (1700) 2 Lut 1517; *Blakey v Dinsdale* (1777) 2 Cowp 661; Com Dig, Distress (A 1); 1 Roll Abr 666. As to distress generally see DISTRESS. As to actions of wrongful interference with goods (formerly trespass or trover) founded on an unlawful or excessive distress for toll see *Leight v Pym* supra; *Wigley v Peachy* (1732) 2 Ld Raym 1589; *Norman v Bell* (1831) 2 B & Ad 190; the Torts (Interference with Goods) Act 1977 s 1 (as amended); and TORT vol 45(2) (Reissue) PARA 542 et seq. Tolls paid, not voluntarily but to avoid seizure of the goods, if unlawfully demanded, may be recovered, but not if paid to avoid litigation and because others in similar cases were paying tolls: *Maskell v Horner* [1915] 3 KB 106, CA.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(i) Tolls/1034. Taking excessive toll.

1034. Taking excessive toll.

Toll unlawfully taken may be recovered as money had and received¹, and a claim for wrongful interference with goods may be founded on an unlawful or excessive distress for toll². It has been said that if excessive toll is taken, the franchise of toll, although not the market or fair, is forfeited³.

1 *Waterhouse v Keen* (1825) 4 B & C 200; Com Dig, Market (F 1); Com Dig, Toll (H 2). See also *Wood v Haukshead* (1602) Yelv 14. As to the recovery of money had and received see RESTITUTION vol 40(1) (2007 Reissue) PARA 5. It has been held that tolls may not be recovered as money had and received if paid merely to avoid litigation: see *Maskell v Horner* [1915] 3 KB 106, CA. Cf *Kleinwort Benson Ltd v Lincoln City Council* [1992] 2 AC 349, [1998] 4 All ER 513, HL; and RESTITUTION vol 40(1) (2007 Reissue) PARA 28 et seq.

2 See PARA 1033 note 3 ante.

3 Com Dig, Market (1). For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(i) Tolls/1035. Non-domestic rating and income tax.

1035. Non-domestic rating and income tax.

Inasmuch as tolls, in the strict sense of the term¹, unlike stallages², are profits, not of the soil, but of the market³, payable in respect of the use of the market and not in respect of any user or occupation of the market-place, they cannot be taken into account in estimating the value of the market-place for the assessment to non-domestic rating⁴. This is equally the case whether they are granted by charter or payable by statute, and whether they are payable by the buyer upon sales in the market or upon the entry of goods into the market⁵, and although they are taken by a corporation and applied to public purposes⁶.

Profits or gains arising out of land in the case of rights of markets and fairs⁷ are charged to tax under Case 1 of Schedule D⁸.

1 As to the nature of toll see PARA 1028 ante.

2 As to stallages see PARA 1036 et seq post.

3 For the meaning of 'market' see PARA 1001 ante.

4 *Roberts v Aylesbury Overseers* (1853) 1 E & B 423; *Horner v Stepney Assessment Committee* (1908) 2 Konst Rat App 743; *R v Bell* (1816) 5 M & S 221. So, too, market tolls are not a 'tenement' under a local rating Act: *R v Mosley* (1823) 3 Dow & Ry KB 385. See also PARA 1040 post; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 16.

5 *R v Casswell* (1872) LR 7 QB 328; *London Corpn v St Sepulchre, London, Overseers* (1871) LR 7 QB 333n; and see *Oswestry Corpn v Hudd (Valuation Officer)* [1966] 1 All ER 490, [1966] 1 WLR 363, CA.

6 *Worcester Corpn v St Clements Overseers* (1858) 22 JP Jo 319; *Brecon Markets Co v St Mary's, Brecon* (1877) 36 LT 109.

7 See the Income and Corporation Taxes Act 1988 s 55(2)(e); and INCOME TAXATION.

8 *Ibid* s 55(1). As to persons chargeable see s 59; and INCOME TAXATION. As to distress for unpaid tax see DISTRESS vol 13 (2007 Reissue) PARA 1127 et seq.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(ii) Stallages/1036. Stallage, piccage and pennage.

(ii) Stallages

1036. Stallage, piccage and pennage.

Payments made for the enjoyment of the exclusive occupation¹ of any portion of the soil for the purpose of exposing goods for sale in a market or fair² are usually known as stallage, piccage, pennage or rent. Stallage is the appropriate term for payment for the liberty of placing a stall on the soil or for standing room for cattle or goods within the market or fair³. When the soil is broken, the payment is often called piccage⁴. Pennage is a sum payable for the liberty to erect pens⁵. However, piccage and pennage are merely names for particular varieties of stallage.

1 As to exclusive occupation see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 6.

2 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

3 *Northampton Corp'n v Ward* (1745) 2 Stra 1238.

4 *Northampton Corp'n v Ward* (1745) 2 Stra 1238; *Yarmouth Corp'n v Groom* (1862) 1 H & C 102 at 112 per Wilde B.

5 *Northampton Corp'n v Ward* (1745) 2 Stra 1238; *Yarmouth Corp'n v Groom* (1862) 1 H & C 102 at 112 per Wilde B.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(ii) Stallages/1037. Rights of owner and public.

1037. Rights of owner and public.

The owner of the market¹ is entitled to stallage by reason of tenure and not by reason of any franchise, and no grant, prescription nor statutory authority need be shown for taking it². Therefore, he cannot take stallage unless he owns the soil of the market or is entitled to possession or control of it³. He is not under any duty to erect stalls or pens⁴, but, if he does so, he is liable if they are not in a reasonably safe condition for their purpose⁵. Moreover, he may not cover the market-place with stalls so as to compel the public to take them⁶.

A member of the public is not entitled as of right to exclusive occupation⁷ of any portion of the soil of the market without the consent of the person in possession of the soil, and anyone doing so is a trespasser⁸. Nevertheless, there may be a valid custom for a particular class of persons to erect and occupy stalls in a market or fair, paying a reasonable sum as stallage⁹.

1 For the meaning of 'market' see PARA 1001 ante.

2 *Northampton Corpn v Ward* (1745) 2 Stra 1238; *R v Marsden* (1765) 3 Burr 1812 at 1819 per Wilmot J, and at 1820 per Aston J.

3 *Elwood v Bullock* (1844) 6 QB 383 at 411 per Lord Denman CJ; *Austin v Whittred* (1746) Willes 623; *Lockwood v Wood* (1841) 6 QB 31; *A-G v Horner* (1885) 11 App Cas 66, HL.

4 *Draper v Sperring* (1861) 10 CBNS 113 at 123; *Brackenborough v Spalding UDC* [1942] AC 310 at 314, [1942] 1 All ER 34 at 37, HL, per Viscount Simon LC, at 323 and 42 per Lord Wright, and at 328 and 44 per Lord Porter.

5 *Lax v Darlington Corpn* (1879) 5 Ex D 28, CA; *Brackenborough v Spalding UDC* [1942] AC 310, [1942] 1 All ER 34, HL; and see PARA 1021 note 8 ante.

6 See PARA 1039 text and note 4 post.

7 As to exclusive occupation see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 6.

8 *Northampton Corpn v Ward* (1745) 2 Stra 1238. A lease of stallage in a street market does not pass such an interest in the soil as to authorise the lessee to occupy the market-place at times when no market is being held: *Coleman v Howard* (1860) 2 LT 463.

9 *Tyson v Smith* (1838) 9 Ad & El 406 (custom for victuallers to erect stalls in fair); *Elwood v Bullock* (1844) 6 QB 383 (a similar custom); *Chafin v Betsworth* (1684) 3 Lev 190 (custom for tenants of a manor to erect stalls in market-place of manor). As to the general characteristics of such a custom see CUSTOM AND USAGE vol 12(1) (Reissue) PARA 606.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(ii) Stallages/1038. When stallage is payable.

1038. When stallage is payable.

Stallage is payable wherever there is any exclusive occupation of a particular portion of the soil by a person¹ or a group of persons², for example if goods are pitched on an appropriated portion of the soil³, or a stand is taken up with a table or basket placed on the ground⁴. Unless there is such exclusive occupation stallage is not payable⁵; so none is payable for cattle driven into a market and not penned⁶ or for merely resting baskets or goods on the ground temporarily⁷.

1 *Yarmouth Corpn v Groom* (1862) 1 H & C 102. As to exclusive occupation see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 6.

2 See *Duke of Bedford v St Paul, Covent Garden, Overseers* (1881) 51 LJMC 41.

3 *Duke of Bedford v St Paul, Covent Garden, Overseers* (1881) 51 LJMC 41; *Duke of Bedford v Emmett* (1820) 3 B & Ald 366.

4 *Norwich Corpn v Swann* (1776) 2 Wm Bl 1116; *Yarmouth Corpn v Groom* (1862) 1 H & C 102.

5 *A-G v Tynemouth Corpn* (1900) 17 TLR 77.

6 *Swindon Central Market Co Ltd v Panting* (1872) 27 LT 578.

7 *Townend v Woodruff* (1850) 5 Exch 506; *Sawyer v Wilkinson* (1598) Cro Eliz 627; *Wigley v Peachy* (1732) 2 Ld Raym 1589.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(ii) Stallages/1039. Amount recoverable.

1039. Amount recoverable.

The amount payable may be fixed by immemorial custom or by statute, and, if by custom, the owner may by custom have the right to distrain for the amount so fixed¹. It may also by custom be payable in kind². Where it is not so fixed, the owner is free to make a voluntary agreement for the amount of stallage³, but if the market owner so covers the market-place with stalls that the public is obliged to use them, the taking of stallage in such circumstances may amount to an indictable offence⁴.

It is not necessary to show an express contract to pay an agreed sum; if there has been occupation of a portion of the soil with the licence of the owner, a reasonable sum may be recovered in a claim for use and occupation⁵.

1 *Bennington v Taylor* (1700) 2 Lut 1517; *Duke of Bedford v Emmett* (1820) 3 B & Ald 366. As to the presumption of immemorial existence see CUSTOM AND USAGE vol 12(1) (Reissue) PARA 607.

2 *Hickman's Case* (1599) 2 Roll Abr 123; and cf para 1028 ante.

3 *A-G v Colchester Corpn* [1952] Ch 586, [1952] 2 All ER 297.

4 *R v Burdett* (1697) 1 Ld Raym 148; *A-G v Colchester Corpn* [1952] Ch 586 at 595, 598, 600, [1952] 2 All ER 297 at 301, 303, 305 per Danckwerts J (cases concerned with the offence of extortion; now abolished). It appears that such behaviour is a ground of forfeiture of the market or fair: 2, Co Inst 221. For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

5 *Taunton Market Trustees v Kimberley* (1776) 2 Wm Bl 1120; *Newport Corpn v Saunders* (1832) 3 B & Ad 411. It is questionable whether a claim for use and occupation will lie where the occupation has been without the licence of the owner of the soil: see *Phillips v Homfray* (1883) 24 ChD 439 at 461, CA, per Bowen LJ.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(ii) Stallages/1040. Rateability of stallages.

1040. Rateability of stallages.

Stallage, being a payment made to the occupier of the soil for the use of the soil, and not for the use of the incorporeal market¹, must be taken into account in estimating the yearly value of the soil for assessment for the purpose of non-domestic rating². This is so if the payment is made in respect of any exclusive occupation of a portion of the soil, for however short a time³, and even if the particular portion occupied is liable to be changed from time to time at the will of the market owner⁴, or if the payment is made by the name of toll for the sale of goods within definite portions of the market-place specifically appropriated to the sale of particular kinds of goods⁵. However, a stall-holder whose position is liable to be moved at the will of the owner of the soil is not the person in rateable occupation⁶.

1 For the meaning of 'market' see PARA 1001 ante.

2 *Horner v Stepney Assessment Committee* (1908) 2 Konst Rat App 743; *Percy v Ashford Union* (1876) 34 LT 579; and see *Oswestry Corp v Hudd (Valuation Officer)* [1966] 1 All ER 490, [1966] 1 WLR 363, CA.

3 *R v Barnard Castle Inhabitants* (1863) 27 JP 534; *Williams v Wednesbury Churchwardens and Overseers* (1890) Ryde Rat App (1886-90) 327 (stalls in a market held on a highway). As to exclusive occupation see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 6.

4 *London Corp v Greenwich Union Assessment Committee* (1883) 48 LT 437, DC.

5 *Duke of Bedford v St Paul, Covent Garden, Overseers* (1881) 51 LJMC 41. It is immaterial that the payments are made under the name of 'tolls' (*Roberts v Aylesbury Overseers* (1853) 1 E & B 423) or of 'market dues and charges' (*London Corp v Greenwich Union Assessment Committee* (1883) 48 LT 437, DC). As to tolls properly so called see PARA 1028 ante.

6 *Spear v Bodmin Union Guardians* (1880) 49 LJMC 69. As to rating generally see RATING AND COUNCIL TAX.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(iii) Exemptions from Tolls and Stallages/1041. Common law exemption.

(iii) Exemptions from Tolls and Stallages

1041. Common law exemption.

The following persons are exempt from payment of toll in all markets and fairs¹: (1) the Sovereign and a Queen Consort²; (2) all ecclesiastical persons for their ecclesiastical goods and for goods bought by them for their sustenance, but not for merchandise³; and (3) lords of manors which are ancient demesne⁴ and their tenants in respect of sales by them of the produce of their tenements, and of purchases by them of goods to maintain their tenements or themselves or their households there⁵, but not for merchandise⁶.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 Co Litt 133b; 2 Co Inst 221; Com Dig, Market (F1); and see CROWN AND ROYAL FAMILY vol 12(1) PARAS 29, 49.

3 Fitz Nat Brev 227 (F); 2 Co Inst 3-4; Com Dig, Ecclesiastical Persons (D). See further ECCLESIASTICAL LAW.

4 As to ancient demesne see REAL PROPERTY vol 39(2) (Reissue) PARA 13; CUSTOM AND USAGE vol 12(1) (Reissue) PARA 643.

5 *Savery v Smith* (1686) 2 Lut 1144; Fitz Nat Brev 14 (E), 228 (A); 2 Co Inst 221, 654; 49 Selden Society's Publications 147, 148.

6 *Ward v Knight* (1591) Cro Eliz 227; and see *Iveagh v Martin* [1961] 1 QB 232, [1960] 2 All ER 668.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(iii) Exemptions from Tolls and Stallages/1042. Right to remit.

1042. Right to remit.

The owner of a market is not bound to collect tolls impartially, and may remit the whole or any part of them to whomsoever he pleases¹. However, a local authority is generally, in principle, always subject to the principles of administrative law².

¹ *Duke of Newcastle v Worksop UDC* [1902] 2 Ch 145; *Lancum v Lovell* (1832) 6 C & P 437 at 465 per Tindal CJ. As to claims by the Crown see the Markets and Fairs Clauses Act 1847 s 54; and PARA 1088 note 10 post.

² See generally ADMINISTRATIVE LAW.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(iii) Exemptions from Tolls and Stallages/1043. Grant of exemption.

1043. Grant of exemption.

The owner of a market or fair¹ may grant to corporate bodies, capable of taking by grant, exemption for their members from toll or stallage², and such grants are binding on the grantor of the exemption and on all who derive title from him³. A lost grant of exemption may be presumed from long user⁴, and a lord of a manor may prescribe for exemption for the tenants of his manor⁵. The Crown may also in certain cases grant exemption from toll⁶.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 *Lockwood v Wood* (1841) 6 QB 31; *Tewkesbury Corpn v Bricknell* (1809) 2 Taunt 120. In *Woolwich Corpn v Gibson* (1905) 92 LT 538, an unsuccessful attempt was made to set up by prescription a grant of exemption to trustees for the inhabitants of the parish in which the market was held.

3 This includes the Crown. If the toll afterwards comes into the hands of the Crown, it can only be regranted subject to the exemptions: *Tewkesbury Corpn v Bricknell* (1809) 2 Taunt 120; and see PARA 1061 post.

4 *Ellis v Bridgnorth Corpn* (1863) 15 CBNS 52. See also *Osbuston v James* (1688) 2 Lut 1377. As to the presumption in favour of long user see EASEMENTS AND PROFITS A PRENDRE.

5 2 Vin Abr 9, Action [Case].

6 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 873. As to such a grant see *Lord Middleton v Lambert* (1834) 1 Ad & El 401. A claim lies at the suit of a corporation to which exemption has been granted for merely demanding toll from corporations entitled to take the benefit of the exemption: *London Corpn v Lynn Regis Corpn* (1796) 1 Bos & P 487, HL. The claim was formerly by writ de essendo quietum de theolonio: *London Corpn v Lynn Regis Corpn* supra. Exemption of inhabitants of a city from tolls throughout England does not include tolls in the city: *Truro Corpn v Reynolds* (1832) 1 Moo & S 272. The abolition by the Municipal Corporations Act 1882 s 208(2) (repealed), of the exemption of inhabitants or freemen, etc from tolls in markets or fairs in which tolls are levied for the benefit of a borough did not affect the rights of persons claiming exemption otherwise: see s 208(2) (repealed).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(iv) Profits of Statutory Markets./1044. Profits under the Markets and Fairs Clauses Act 1847.

(iv) Profits of Statutory Markets.

1044. Profits under the Markets and Fairs Clauses Act 1847.

When a market or fair¹ is held under statutory authority² there is a right to take such tolls³ as are authorised by the statute. The incorporation of clauses of the Markets and Fairs Clauses Act 1847⁴ with respect to the stallages⁵, rents and tolls to be taken by the undertakers⁶, does not in itself confer any right to take tolls. Those clauses only regulate the conditions subject to which the tolls, if any, authorised by the special Act, and stallages and rents, are payable. No tolls may be demanded until the market-place has been completed and fit for use⁷. The stallages, rents and tolls may be changed from time to time within the amounts limited by the special Act⁸. Tolls are payable on demand⁹. Tolls for weighing or measuring must be paid before the weighing or measuring takes place¹⁰, and tolls for cattle¹¹ must be paid as soon as the cattle are brought to the market-place, and before they are put into a pen or tied up, and an additional toll is imposed if they are not removed within one hour after the close of the market¹². As a condition of liability to pay, a list of the dues payable under the Markets and Fairs Clauses Act 1847 and the special Act must be set up on boards and exhibited in the market-place and each weighing house¹³.

If dues are not paid when demanded, distress may be levied on any cattle or article chargeable or in the market, belonging to or in the charge of the person¹⁴ liable, or the amount may be recovered as a civil debt¹⁵. Any person assaulting or obstructing any other person authorised to collect dues is liable to a fine¹⁶. Any dispute concerning any stallage, rent or toll must be determined by a justice¹⁷, who may make such order as is proper, including costs, and in default of payment on demand, they may be recovered by the issue of a distress warrant¹⁸. Any person demanding a greater toll than that authorised is liable to a fine¹⁹.

1 For the meaning of 'the market or fair' see PARA 1011 note 1 ante. For the meanings of 'market' and 'fair' generally see PARAS 1001-1002 ante.

2 As to such markets see PARAS 1009-1017 ante.

3 As to tolls see PARAS 1028-1035 ante.

4 As to incorporation of the Markets and Fairs Clauses Act 1847 see PARA 1011 ante.

5 As to stallages see PARAS 1036-1040 ante.

6 I.e. the Markets and Fairs Clauses Act 1847 ss 31-41 (as amended). For the meaning of 'the undertakers' see PARA 1012 note 4 ante.

7 See *ibid* s 31. A certificate signed by two justices is conclusive evidence to this effect: see s 32. For the meaning of 'two justices' see PARA 1013 note 7 ante.

8 See *ibid* s 36. For the meaning of 'the special Act' see PARA 1011 ante. The special Act may impose tolls on the exposure for sale, or on the sale, of goods anywhere in the district or town in which the market is held. As to the interpretation of such a provision see *Philpott v Allright* (1906) 94 LT 540, DC; *Newton-in-Makerfield Urban Council v Lyon* (1900) 69 LJQB 230, DC.

9 See the Markets and Fairs Clauses Act 1847 s 33.

10 See *ibid* s 34.

11 'Cattle' includes horse, ass, mule, ram, ewe, wether, lamb, goat, kid, or swine: *ibid* s 3.

12 *Ibid* s 35.

13 See *ibid* s 41. It seems that this should be a list of the tolls actually in force at the time and not a list of the maximum tolls authorised: *Gregson v Potter* (1879) 4 Ex D 142.

14 For the meaning of 'person' see PARA 1012 note 3 ante.

15 See the Markets and Fairs Clauses Act 1847 s 38.

16 *Ibid* s 40. The fine must not exceed level 1 on the standard scale: s 40 (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 1012 note 6 ante. See note 18 *infra*.

17 For the meaning of 'justice' see PARA 1013 note 7 ante.

18 Markets and Fairs Clauses Act 1847 s 39. If s 52 is incorporated in the special Act, the clauses of the Railways Clauses Consolidation Act 1845 apply: see PARA 1088 post.

19 Markets and Fairs Clauses Act 1847 s 37. The fine must not exceed level 1 on the standard scale: s 37 (amended by virtue of the Criminal Justice Act 1982 ss 37, 46); and cf the fine imposed under the Food Act 1984 s 53(4), as to which see PARA 1045 text and note 10 post.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(iv) Profits of Statutory Markets./1045. Profits under the Food Act 1984.

1045. Profits under the Food Act 1984.

A market authority¹ may demand in respect of the market² such charges³ as it may from time to time determine⁴. A market authority which provides a weighing machine for weighing cattle, sheep or swine, or a cold air store or refrigerator for the storage and preservation of meat and other articles of food⁵, may demand in respect of the weighing of such animals or, as the case may be, the use of the store or refrigerator such charges, as it may from time to time determine⁶. The authority must keep exhibited in conspicuous places in the market place, and in any market house, tables stating in large and legibly printed characters the charges payable⁷, and the authority must keep so much of the tables as relate to charges payable in respect of the weighing of animals⁸, conspicuously exhibited at every weighing machine provided by them in connection with the market for the purpose⁹.

Any person demanding or accepting an excessive charge is liable to a fine¹⁰. However, rents charged by a market authority in respect of the letting of accommodation within the market for any period longer than one week, are not so restricted¹¹.

Stallages, tolls and charges must be paid on demand to an authorised market officer¹². Charges payable in respect of the weighing of cattle, sheep or swine must be paid in advance to an authorised market officer by the person bringing the animals to be weighed¹³. Tolls for animals are payable and may be demanded as soon as the animals are brought into the market-place and before they are put into a pen or tied up, and further tolls are payable for animals not removed within an hour after the close of the market¹⁴. Distress may be levied by the authorised markets officer in respect of unpaid dues on any animals, poultry or other articles which are either chargeable or belonging to, or in the charge of, the person liable, and may also be recovered summarily as a civil debt or in any court of competent jurisdiction¹⁵.

1 For the meaning of 'market authority' see PARA 1015 ante.

2 I.e a market under the Food Act 1984: see PARA 1015 ante. For the meaning of 'market' generally see PARA 1001 ante.

3 'Charges' includes stallage or tolls: *ibid* s 61. As to tolls and stallage see PARAS 1028-1043 ante.

4 *Ibid* s 53(1) (amended by the Food Safety Act 1990 ss 52, 59(4), Sch 2 para 4, Sch 5). See also *Ricketts v Havering London Borough Council* (1980) 79 LGR 146; and PARA 1105 post.

5 For these purposes, 'food' has the same meaning as in the Food Safety Act 1990 (see FOOD vol 18(2) (Reissue) PARA 201); definition applied by the Food Act 1984 s 61 (substituted by the Food Safety Act 1990 s 52, Sch 2 para 11).

6 Food Act 1984 s 53(2) (substituted by the Food Safety Act 1990 Sch 2 para 4). As to the provision of cold stores see the Food Act 1984 s 57A (as added); and PARA 1100 post.

7 *Ibid* s 53(3)(a). The text refers to the charges payable under Pt III (ss 50-61) (as amended).

8 'Animal' does not include bird or fish: *ibid* s 132(1).

9 *Ibid* s 53(3)(b) (amended by the Food Safety Act 1990 Sch 2 para 4, Sch 5).

10 Food Act 1984 s 53(4). The fine must not exceed level 2 on the standard scale: s 53(4). As to the standard scale see PARA 1012 note 6 ante. Such an offence is triable summarily: s 93(1), (2)(a), (3)(f). Cf the fine imposed under the Markets and Fairs Clauses Act 1847 s 37 (as amended): see PARA 1044 text and note 19 ante.

Where an offence under the Food Act 1984, or any regulations or order made under that Act, which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of (1) any director, manager, secretary or other similar officer of the body corporate; or (2) any person who was purporting to act in any such capacity, he as well as the body corporate is deemed to be guilty of that offence and is liable to be proceeded against and punished accordingly: s 94. No prosecution for an offence under the Food Act 1984 or regulations made under that Act which is triable either summarily or on indictment may be begun after the expiry of three years from the commission of the offence, or one year from its discovery by the prosecutor, whichever is the earlier: s 95(1).

11 Ibid s 53(5).

12 Ibid s 54(1). 'Authorised market officer' means an officer of a market authority specially authorised by it to collect charges in its market: s 61.

13 Food Act 1984 s 54(2) (substituted by the Food Safety Act 1990 Sch 2 para 5).

14 Food Act 1984 s 54(3).

15 Ibid s 55.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(iv) Profits of Statutory Markets./1046. Profits under the Animal Health Act 1981.

1046. Profits under the Animal Health Act 1981.

In markets authorised by the Animal Health Act 1981¹ the local authority may charge for the use of a wharf or other place provided by it under that Act² such sums as may be imposed by byelaws approved by the appropriate Minister³. The tolls⁴ are regulated by the Markets and Fairs Clauses Act 1847⁵, which is incorporated by the Animal Health Act 1981⁶.

The tolls so received must be carried to a separate account, and be applied in payment of the interest on and principal of loans which the local authority has contracted under the Animal Health Act 1981, and then towards the discharge of the local authority's expenses under that Act⁷.

1 As to such markets see PARA 1017 ante. For the meaning of 'market' see PARA 1001 ante.

2 le under the Animal Health Act 1981 s 54: see ANIMALS vol 2 (2008) PARA 1124.

3 le made under ibid s 54(3), (4): see ANIMALS vol 2 (2008) PARA 1124. As to the responsible local authorities see s 50 (as amended); and ANIMALS vol 2 (2008) PARA 1121. 'The appropriate Minister' means, in relation to England, the Minister of Agriculture, Fisheries and Food, and in relation to Wales, the Secretary of State: s 86(1) (b). The Animal Health Act 1981 refers to the Minister of Agriculture, Fisheries and Food but since June 2001 the functions of the Ministry of Agriculture, Fisheries and Food have been exercised by the Department for the Environment, Food and Rural Affairs: see No 10 Downing Street Press Release Delivering Effective Government (8 June 2001). In relation to Wales, the functions exercisable by the appropriate Minister under the Animal Health Act 1981 are carried out by the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Secretary of State see PARA 1023 note 3 ante.

4 As to tolls see PARAS 1028-1035 ante.

5 See the Markets and Fairs Clauses Act 1847 ss 31-41 (as amended); and PARA 1044 ante.

6 See the Animal Health Act 1981 s 54(2); and PARA 1017 ante. The charges are deemed to be tolls authorised by the special Act: s 54(4). For the meaning of 'the special Act' see PARA 1011 ante. As to the incorporation of the Markets and Fairs Clauses Act 1847 see PARA 1011 ante.

7 See the Animal Health Act 1981 s 54(5); and ANIMALS vol 2 (2008) PARA 1124. As to accounts, and as to the returns of expenditure and receipts see PARA 1101 post.

UPDATE

1046 Profits under the Animal Health Act 1981

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(4) TOLLS, STALLAGES AND PROFITS/(iv) Profits of Statutory Markets./1047. Profits under local Acts.

1047. Profits under local Acts.

A local authority¹ which maintains a market in pursuance of a local Act², may, notwithstanding anything in any enactment relating to the market, make in connection with it such charges as the authority determines from time to time³.

1 For these purposes, 'local authority' means a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London, the Council of the Isles of Scilly, a parish council and a community council: Local Government (Miscellaneous Provisions) Act 1976 s 44(1) (definition substituted by the Local Government Act 1985 s 84(1), Sch 14 para 53(b); and amended by the Local Government Act 1985 s 102(2), Sch 17; and the Local Government Reorganisation (Wales) (Consequential Amendments No 3) Order 1996, SI 1996/3071, art 2, Schedule para 1(7)). As to areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq. As to parish and community councils see LOCAL GOVERNMENT vol 69 (2009) PARAS 30, 42. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq; and as to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.

2 As to such markets see PARA 1009 et seq ante. For the meaning of 'market' generally see PARA 1001 ante. For these purposes, 'local Act' includes a provisional order confirmed by an Act: Local Government (Miscellaneous Provisions) Act 1976 s 44(1).

3 Ibid s 36(2).

UPDATE

1047 Profits under local Acts

NOTE 1--Definition of 'local authority' in Local Government (Miscellaneous Provisions) Act 1976 s 44(1) further amended: Local Government and Public Involvement in Health Act 2007 Sch 13 para 33; Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 43.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(5) DISTURBANCE/(i) In general/1048. Nature of disturbance.

(5) DISTURBANCE

(i) In general

1048. Nature of disturbance.

The owner of a market of fair¹ is entitled to protection from disturbance, and disturbance may consist of any unjustifiable interference with the owner's exclusive right to hold his market or fair and take profits². It is a tort in respect of which there is a right of action³. Interference with the exclusive right may arise from the levying of a rival market⁴, selling outside the market or fair⁵ or hindering or obstructing the market or fair⁶.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 See *Birmingham Corp'n v Perry Barr Stadium Ltd* [1972] 1 All ER 725 at 729 per Pennycuik V-C.

3 See *Scottish Co-operative Wholesale Society Ltd v Ulster Farmers' Mart Co Ltd* [1960] AC 63, [1959] 2 All ER 486, HL; and see PARA 1051 post.

4 See PARA 1052 et seq post.

5 See PARA 1050 post.

6 See PARA 1049 post.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(5) DISTURBANCE/(i) In general/1049. Obstruction or hindering the market.

1049. Obstruction or hindering the market.

A claim for disturbance¹ lies against one who on his own account collects toll² in the market³, obstructs the toll-collector appointed by the owner⁴, hinders persons⁵ or tollable goods⁶ from coming to the market or causes a physical obstruction of the market-place by which persons are excluded from part of it⁷ or of the approaches to the market-place⁸.

1 As to the nature of disturbance see PARA 1048 ante; and see PARA 1051 post.

2 As to tolls see PARAS 1028-1035 ante.

3 *Dent v Oliver* (1606) Cro Jac 122. As to trespass with force and arms for erecting a toll booth and collecting toll and assaulting the servants of the owner and preventing them from collecting toll see *de Chaunce v de Twenge and de Ros* (1337) YB (Rolls Series) 11 Edw 3 p 38. As to trespass with force and arms for taking toll in another's market see Fitz Nat Brev 91 (G). For the meaning of 'market' see PARA 1001 ante.

4 *Dent v Oliver* (1606) Cro Jac 122.

5 *Abbot of Denesham's Case* (1355) YB 29 Edw 3, fo 18; *Gloucester Grammar School Case* (1410) YB 11 Hen 4, fo 47, pl 21 per Serjeant Skrene; *Ashby v White* (1703) 6 Mod Rep 45 at 49 per Powell J; approved in *Tewkesbury Corp'n v Diston* (1805) 6 East 438 at 462 per Lord Ellenborough CJ.

6 *Turner v Sterling* (1672) 2 Vent 25 at 26 per Wylde B. Purchasing goods on their way to a market on which tolls are not payable may notwithstanding 7 & 8 Vict c 24 (Forestalling, Regrating, etc) (1844) (repealed), abolishing the offences of forestalling, regrating and engrossing, be an actionable disturbance: *Loughrey v Doherty* [1928] IR 103, CA.

7 *Thompson v Gibson* (1841) 7 M & W 456.

8 *Horner v Whitechapel District Board of Works* (1885) 53 LT 842, CA. As to further causes of action, eg evading toll, see PARA 1050 post; and as to setting up a rival market see PARA 1052 et seq post.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(5) DISTURBANCE/(i) In general/1050. Selling outside the market to evade toll.

1050. Selling outside the market to evade toll.

A claim for disturbance¹ by evading payment of toll² lies against one who designedly, with an intention to take the benefit of the market³ without paying toll, sells outside a market⁴. However, proof of the design to evade payment of toll fails if it is shown that there was at the time of the sale no room in the market⁵, or that the market is ordinarily overcrowded and that the defendant had no notice that there was room on the particular occasion⁶. Selling tollable commodities by sample in or near a market is not in itself a disturbance⁷, but it is an actionable disturbance if it is done with intent to evade payment of a toll which would be due if the bulk were brought into the market and there sold, and to get the benefit of the market without such payment⁸.

1 See PARA 1051 post.

2 As to tolls see PARAS 1028-1035 ante.

3 For the meaning of 'market' see PARA 1001 ante.

4 *Bridgland v Shapter* (1839) 5 M & W 375; *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927 at 960, HL, per Lord Blackburn; affg (1883) 25 ChD 511 at 555, CA, per Fry LJ; applied in *Scottish Co-operative Wholesale Society Ltd v Ulster Farmers' Mart Co Ltd* [1960] AC 63, [1959] 2 All ER 486, HL. Selling from carts or vans standing outside a house is an actionable disturbance: *Horner v Freeman* [1884] WN 223.

5 *Goldsmid v Great Eastern Rly Co* (1883) 25 ChD 511 at 555, CA, per Fry LJ.

6 *Prince v Lewis* (1826) 5 B & C 363.

7 *Blakey v Dinsdale* (1777) 2 Cowp 661; *Tewkesbury Corp v Diston* (1805) 6 East 438; *Brecon Corp v Edwards* (1862) 1 H & C 51.

8 *Moseley v Pierson* (1790) 4 Term Rep 104 at 107 per Lord Kenyon CJ; *Tewkesbury Corp v Bricknell* (1809) 2 Taunt 120.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(5) DISTURBANCE/(i) In general/1051. Claim for disturbance.

1051. Claim for disturbance.

A claim for disturbance¹ is a possessory action. The claimant must prove the existence of the franchise to hold a market or fair², and that he is in possession of the franchise³ and actually holds the market or fair⁴, or would do so if he were not prevented by the acts of disturbance⁵.

The claimant may recover damages, and the continuance of the disturbance may be restrained by injunction⁶.

1 As to the nature of disturbance see PARA 1048 ante.

2 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante. As to franchise see PARAS 1001-1003 ante.

3 *Dent v Oliver* (1606) Cro Jac 122; *Baron and Baroness de Rutzen v Lloyd* (1836) 5 Ad & El 456; *Yard v Ford* (1670) 2 Saund 172 (1871 Edn 500 and notes); *Fitzgerald v Connors* (1871) IR 5 CL 191.

4 *Dorchester Corpn v Ensor* (1869) LR 4 Exch 335.

5 *Marquis of Downshire v O'Brien* (1887) 19 LR Ir 380 at 389 per Hedges E Chatterton V-C.

6 See *Dorchester Corpn v Ensor* (1869) LR 4 Exch 335; *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927, HL; *Wilcox v Steel* [1904] 1 Ch 212, CA; *Morpeth Corpn v Northumberland Farmers' Auction Mart Co Ltd* [1921] 2 Ch 154 at 163 per Sargant J; *Birmingham Corpn v Perry Barr Stadium Ltd* [1972] 1 All ER 725 As to injunctions see generally CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq; TORT vol 97 (2010) PARA 470 et seq. As to trespass generally see TORT vol 45(2) (Reissue) PARA 659 et seq.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(5) DISTURBANCE/(ii) Levying a Rival Market/1052. Rival market within the common law distance.

(ii) Levying a Rival Market

1052. Rival market within the common law distance.

A franchise of market or fair¹ carries with it a right to be protected from disturbance by a rival market or fair levied within the common law distance of seven miles², or more strictly six and two-third miles³, of the place where the market or fair is held⁴. Any other market or fair held within that distance may be a disturbance, but a market or fair held beyond that distance, although it may cause loss, cannot be an injury in law; it is at most *damnum sine injuria*⁵.

In the case of a statutory market⁶, the common law protection applies unless the creating statute expressly or by necessary implication excludes the right⁷.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante. As to franchise see PARAS 1001-1003 ante.

2 See the declaration in *Yard v Ford* (1670) 2 Saund 172. The distance in the case of fairs may be more than seven miles: see 32 LQR 206; cf *R v Aires* (1717) 10 Mod Rep 354. See also *Leicester Corp'n v Maby* (1971) 70 LGR 209; and *Northampton Borough Council v Midlands Development Group of Companies Ltd* [1978] JPL 543.

3 Bract, bk iv, c 46, fol 235b (3 Sir Travers Twiss' Edn 585); *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927 at 936, HL, where Lord Selborne LC speaks of the distance as 'nearly seven miles'. See 32 LQR 199-207, where the rule given by Bracton is discussed and explained.

4 It may be 'of the town or district within which it may be held' (*Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927 at 936, HL, per Lord Selborne LC, who said 'the protection extends to a distance of nearly seven miles of the places in which they' (ie the market rights) 'might be exercised'). See also the declaration in *Yard v Ford* (1670) 2 Saund 172. But in answer to questions proposed by the House of Lords to the judges in *Re Islington Market Bill* (1835) 3 Cl & Fin 513, in which this point was clearly involved, the judges said 'within the common law distance of an old market'. See also *Birmingham City Council v Anvil Fairs (a firm)* [1989] 1 All ER 147, [1989] 1 WLR 312 (distance to be measured from the site of an actual market, not from the boundary of the area over which the right is held); and *Newcastle-upon-Tyne City Council v Noble* (1990) 89 LGR 618.

A remedy in damages for the levying of a rival market within the common law distance is restricted to nominal damages: *Stoke-on-Trent City Council v W & J Wass Ltd* [1988] 3 All ER 394, [1988] 1 WLR 1406, CA.

5 Bract, bk iv, c 46, fol 235b (3 Sir Travers Twiss' Edn 585); Britton, II, c 32, s 8, fol 159; Fleta, IV, c 28, s 13.

6 See PARA 1009 ante.

7 *Wakefield City Council v Box* [1982] 3 All ER 506; *Halton Borough Council v Cawley* [1985] 1 All ER 278, [1985] 1 WLR 15 (the common law rule applies notwithstanding that the rival market is situated outside the local authority's district).

UPDATE

1052 Rival market within the common law distance

NOTE 4--See *Leeds CC v Watkins* [2003] EWHC 598 (Ch), [2003] 14 EG 122 (CS) (council entitled to injunction to prevent car boot sales from being held on two separate sites, as they were within common law distance).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(5) DISTURBANCE/(ii) Levying a Rival Market/1053. Rival market on market days or other days.

1053. Rival market on market days or other days.

If the rival market or fair¹ is held on the day for holding the market or fair and within the common law distance² of a lawfully established market or fair³, it is a disturbance by intendment of law and it is not necessary to prove actual damage⁴. The mere infringement of the exclusive right of the owner of the franchise without justification is per se actionable, without proof of special damage. It is a ground for at least nominal damages, and therefore for an injunction⁵. However, where the rival market or fair is held within the common law distance of a lawfully established market or fair but on a day other than the market or fair day, actual damage by loss of tolls⁶, stallage⁷ or other profits of the market must be proved⁸.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 See PARA 1052 ante.

3 As to the creation of markets and fairs see PARA 1004 et seq ante.

4 2 Wms Saund (6th Edn) 172, 174; *Dorchester Corpn v Ensor* (1869) LR 4 Exch 335 at 343 per Channell B; *Elwes v Payne* (1879) 12 ChD 468 at 472 per Jessel MR; *Cork Corpn v Shinkwin* (1825) Sm & Bat 395 at 398; *Winsford Entertainments Ltd v Winsford UDC* (1924) 23 LGR 254; *Hammerton v Earl of Dysart* [1916] 1 AC 57 at 89, HL, per Lord Parker of Waddington; *London Corpn v Lyons, Son & Co (Fruit Brokers) Ltd* [1936] Ch 78 at 124, 140, CA, per Maugham LJ; *Tamworth Borough Council v Fazeley Town Council* (1978) 77 LGR 238, where the authorities are reviewed. In giving their opinion in *Re Islington Market Bill* (1835) 3 Cl & Fin 513 at 520, HL, the judges regarded the establishment of a new market as prima facie injurious to the old market and therefore void. In *Wilcox v Steel* [1904] 1 Ch 212 at 218, CA, per Vaughan Williams LJ, it was suggested in argument that such a presumption could be rebutted, but in *Corke Corpn v Shinkwin* supra, it was held in the King's Bench in Ireland that an action for disturbance would lie, even where the jury found no damage in fact, and it is submitted that this is right. The cause of action is complete when the franchise owner establishes that there is a same-day market within the common law distance, and there is an irrebuttable presumption that a new market set up to be held on the same day is a nuisance unless licensed by the franchise market holder or the subject of a concurrent right of market franchise either by Crown or by statute: *Tamworth Borough Council v Fazeley Town Council* supra at 266 per Vivian Price QC (deputy judge); followed in *Sevenoaks District Council v Pattullo and Vinson Ltd* [1984] Ch 211, [1984] 1 All ER 544, CA. *Cork Corpn v Shinkwin* supra, was followed by Sargant J in *Morpeth Corpn v Northumberland Farmers' Auction Mart Co Ltd* [1921] 2 Ch 154. As to damages generally see DAMAGES.

5 *Morpeth Corpn v Northumberland Farmers' Auction Mart Co Ltd* [1921] 2 Ch 154 at 162 per Sargant J. For a form of injunction see *Morpeth Corpn v Northumberland Farmers' Auction Mart Co Ltd* supra at 163 per Sargant J. As to injunctions generally see CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq.

6 As to tolls see PARAS 1028-1035 ante.

7 As to stallages see PARAS 1036-1040 ante.

8 *Yard v Ford* (1670) 2 Saund 172; *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927, HL; and see the authorities cited in note 3 supra; and PARA 1054 notes 2-6 post. A market held on Monday is prima facie evidence of damage to a market held on Thursday, or vice versa: *Elwes v Payne* (1879) 12 ChD 468 at 473 per Jessel MR. Loss of stallage is enough (*Cork Corpn v Shinkwin* (1825) Sm & Bat 395; *Morpeth Corpn v Northumberland Farmers' Auction Mart Co Ltd* [1921] 2 Ch 154), and also, it would seem, the loss of tolls, the power of charging which has been acquired by a local authority, the owners of a franchise market, under the Markets and Fairs Clauses Act 1847 (*Morpeth Corpn v Northumberland Farmers' Auction Mart Co Ltd* supra at 162 per Sargant J). Where a rival market is held on a different day from the market day, it is a question of fact whether damage is caused, but it is evidence of apprehended damage if a rival market is levied on the next day after a market: *Leicester Corpn v Maby* (1971) 70 LGR 209. See also *Northampton Borough Council v Midlands Development Group of Companies Ltd* [1978] JPL 543.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(5) DISTURBANCE/(ii) Levying a Rival Market/1054. What constitutes a rival market.

1054. What constitutes a rival market.

To constitute a disturbance¹ it is not necessary that the rival market should purport to be a franchise market² or that the defendant should have any intention of setting up a rival market³. Any user of land which encourages and provides for a concourse of buyers and sellers by which members of the public are provided with the means of selling their goods without bringing them to the market may amount to a disturbance⁴, and it is enough to show that the defendant has actively participated in the levying of the rival market by providing land for it and participating in the profits⁵, or that he has knowingly and wilfully contributed to the damage by selling his goods there instead of in the claimant's market⁶. What will constitute a rival market to a statutory market will depend on the rights given by the statute⁷.

1 As to the nature of disturbance see PARA 1048 ante.

2 *Yard v Ford* (1670) 2 Saund 172; *Moseley v Chadwick* (1782) 3 Doug KB 117; *Morpeth Corpn v Northumberland Farmers' Auction Mart Co Ltd* [1921] 2 Ch 154 at 160 per Sargant J. For the meaning of 'market' see PARA 1001 ante. As to franchise see PARAS 1001-1003 ante.

3 *Wilcox v Steel* [1904] 1 Ch 212 at 218, CA, per Vaughan Williams LJ.

4 *Cork Corpn v Shinkwin* (1825) Sm & Bat 395 (user of land for stalls let out to dealers for selling marketable goods); *Dorchester Corpn v Ensor* (1869) LR 4 Exch 335; *Fearon v Mitchell* (1872) LR 7 QB 690; *London Corpn v Low* (1879) 49 LJQB 144; *Elwes v Payne* (1879) 12 ChD 468 (cases of holding public auction sales); *Marquis of Downshire v O'Brien* (1887) 19 LR IR 380; *Birmingham Corpn v Foster* (1894) 70 LT 371; *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927, HL; *Morpeth Corpn v Northumberland Farmer's Auction Mart Co Ltd* [1921] 2 Ch 154 (sale of cattle in auction mart); and see *Scottish Co-operative Wholesale Society Ltd v Ulster Farmers' Mart Co Ltd* [1960] AC 63, [1959] 2 All ER 486, HL.

5 *Dorchester Corpn v Ensor* (1869) LR 4 Exch 335; *Elwes v Payne* (1879) 12 ChD 468.

6 *Marquis of Downshire v O'Brien* (1887) 19 LR Ir 380.

7 *Hailsham Cattle Market Co v Tolman* [1915] 2 Ch 1 at 7, 8, CA, per Pickford LJ.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(5) DISTURBANCE/(ii) Levying a Rival Market/1055. Sales in shops.

1055. Sales in shops.

It is not ordinarily a disturbance¹ for a person to sell his goods in the ordinary course of business in his own shop near the market-place and on market days²; although by immemorial custom or prescription³ the owner of a market⁴ may have the right to prevent sales of marketable commodities, on market days, in shops in the town where the market is held⁵. However, even where such a custom exists, a sale in a shop may be justified if the owner of the market neglects to provide sufficient accommodation⁶.

1 As to the nature of disturbance see PARA 1048 ante.

2 *Macclesfield Corpn v Chapman* (1843) 12 M & W 18; *Manchester Corpn v Lyons* (1882) 22 ChD 287, CA. What constitutes a shop depends on the circumstances of each case: see *Fearon v Mitchell* (1872) LR 7 QB 690; *Haynes v Ford* [1911] 2 Ch 237 at 248, CA, per Cozens-Hardy MR; and PARA 1058 post.

3 As to custom see CUSTOM AND USAGE. As to prescription see EASEMENTS AND PROFITS A PRENDRE.

4 For the meaning of 'market' see PARA 1001 ante.

5 *Macclesfield Corpn v Pedly* (1833) 4 B & Ad 397; *Devizes Corpn v Clark* (1835) 3 Ad & El 506; *Penryn Corpn v Best* (1878) 3 Ex D 292, CA.

6 *Mosley v Walker* (1827) 7 B & C 40.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(5) DISTURBANCE/(ii) Levying a Rival Market/1056. Justification for holding a rival market.

1056. Justification for holding a rival market.

The holding of a rival market or fair¹ within the common law distance², and whether on the same day or on other days, is justifiable if it is held (1) with the consent or licence of the owner of the older franchise³; (2) by statute⁴; or (3) by grant from the Crown made in those circumstances in which the Crown may lawfully grant a new market to be held within the common law distance of an older market⁵.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 As to the common law distance see PARA 1052 ante.

3 Bract, bk iv, c 46, fo 235b (3 Sir Travers Twiss' Edn 585-587); *Tamworth Borough Council v Fazeley Town Council* (1978) 77 LGR 238. Such consent may be presumed from long acquiescence in the disturbance (*Holcroft v Heel* (1799) 1 Bos & P 400, as explained in *Campbell v Wilson* (1803) 3 East 294 at 298 by Le Blanc J; *Great Eastern Ry Co v Goldsmid* (1884) 9 App Cas 927, HL), but mere quiescence or inertia on the part of the owner, which was not continued long enough to satisfy the requirements of the statutes of limitation either directly or by analogy, is no defence (*Morpeth Corp'n v Northumberland Farmers' Auction Mart Co Ltd* [1921] 2 Ch 154 at 163 per Sargant J).

4 *Re Islington Market Bill* (1835) 3 Cl & Fin 513, HL; *Tamworth Borough Council v Fazeley Town Council* (1978) 77 LGR 238.

5 *Re Islington Market Bill* (1835) 3 Cl & Fin 513, HL; *Tamworth Borough Council v Fazeley Town Council* (1978) 77 LGR 238; and see PARA 1005 ante.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(5) DISTURBANCE/(ii) Levying a Rival Market/1057. Where rival market is not justified.

1057. Where rival market is not justified.

Where a rival market¹ is a disturbance² of an older and lawfully established market³ it is not usually a defence that it is held by authority of a grant from the Crown⁴, as in such a case the grant of the new market, even if it does not contain a proviso that it should not be to the nuisance of another market, would itself be void as being in derogation of the earlier grant⁵.

Provided the market or fair is lawfully established and in fact held, it is no justification for levying a rival market that the claimant has been guilty of irregularities by extorting illegal tolls⁶ or unreasonable stallages⁷, or by holding his market on illegal days⁸, or by not providing sufficient accommodation for the public⁹.

Abuse or neglect of the franchise¹⁰ is no excuse for setting up a rival market¹¹.

1 For the meaning of 'market' see PARA 1001 ante.

2 As to the nature of disturbance see PARA 1048 ante.

3 As to the creation of markets see PARA 1004 et seq ante.

4 As to grants by the Crown see PARA 1004 ante.

5 See *Re Islington Market Bill* (1835) 3 Cl & Fin 513 at 519, HL, per Littledale J; 2 Co Inst 406; YB 22 Hen 6, fo 15b; and see PARA 1005 ante.

6 As to tolls see PARAS 1028-1035 ante.

7 *Cork Corpn v Shinkwin* (1825) Sm & Bat 395; *Lord Midleton v Power* (1886) 19 LR Ir 1. As to stallages see PARAS 1036-1040 ante.

8 *Cork Corpn v Shinkwin* (1825) Sm & Bat 395.

9 *Cork Corpn v Shinkwin* (1825) Sm & Bat 395; *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927, HL. In the latter case it was pointed out that not providing sufficient accommodation may justify an individual in selling his goods outside the market (*Prince v Lewis* (1826) 5 B & C 363), but cannot justify holding a rival market, although it may affect the quantum of damages in a claim for disturbance. See also *Tamworth Borough Council v Fazeley Town Council* (1978) 77 LGR 238. As to claims for disturbance see PARA 1051 ante.

10 As to franchise see PARAS 1001-1003 ante.

11 *Lord Midleton v Power* (1886) 19 LR Ir 1; *Re Islington Market Bill* (1835) 3 Cl & Fin 513, HL; *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927, HL. Cf *Peter v Kendal* (1827) 6 B & C 703.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(5) DISTURBANCE/(iii) Statutory Protection/1058. Protection under the Markets and Fairs Clauses Act 1847.

(iii) Statutory Protection

1058. Protection under the Markets and Fairs Clauses Act 1847.

A statutory market¹ usually enjoys protection against certain sales outside the market², conferred by the terms of its special Act³, or by the incorporation with that Act of the appropriate provision of the Markets and Fairs Clauses Act 1847⁴.

Where that provision is incorporated without variation⁵, the market owner has the common law remedy by a claim for disturbance⁶; and by the terms of the provision it is an offence punishable by a fine⁷ on summary conviction for any person⁸, other than a certificated pedlar⁹, after the market-place is opened for public use to sell or expose for sale¹⁰ in any place within the prescribed limits¹¹, except in his own dwelling place or shop, any articles in respect of which tolls are by the special Act authorised to be taken in the market¹².

The word 'sale' is used in its popular sense, that is the transaction which takes place when the contract is made and not when the goods are delivered¹³, and there is no sale within the prohibited area unless both the contract of sale and the delivery of the goods are made within the area¹⁴. To constitute an exposure for a sale the goods must be exposed with a view to offering them for sale and not merely in the course of delivery to a regular customer in pursuance of a mutual course of dealing¹⁵.

To come within the exception the place where the sale takes place must be either the seller's actual dwelling place or some place or some part of it or a real private shop¹⁶, and the sales must not be conducted in such a way as to amount to holding a rival market¹⁷. However, the terms of the special Act may have the effect of enlarging the exceptions¹⁸.

1 As to statutory markets see PARA 1009 et seq ante. For the meaning of 'market' generally see PARA 1001 ante.

2 As to the meaning of 'the market' in this context see PARA 1011 note 1 ante.

3 For the meaning of 'the special Act' see PARA 1011 ante.

4 See the Markets and Fairs Clauses Act 1847 s 13 (as amended). As to the incorporation of that Act see PARA 1011 ante.

5 In some cases the clause is incorporated with a variation, which modifies the effect of the provision as stated in the text. Some of these variations are referred to in notes 6, 10, 12 infra.

6 See PARA 1048 et seq ante; and *Birmingham Corp'n v Foster* (1894) 70 LT 371. In *Abergavenny Improvement Comrs v Straker* (1889) 42 ChD 83, it was held that the terms of a local Act excluded the common law remedy by action for disturbance. See also *Hailsham Cattle Market Co v Tolman* [1915] 2 Ch 1 at 8, CA, per Pickford LJ; *Wakefield City Council v Box* [1982] 3 All ER 506.

7 The fine must not exceed level 1 on the standard scale: Markets and Fairs Clauses Act 1847 s 13 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 1012 note 6 ante. If the Markets and Fairs Clauses Act 1847 s 52 is incorporated, the fine is recoverable in accordance with the Railways Clauses Consolidation Act 1845 s 140 (as amended), ss 142, 144-145 (as amended): see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 423. The penalty cannot be condoned by subsequent payment of toll (*Carter v Parkhouse* (1870) 34 JP 438), and is recoverable notwithstanding that the seller had previously on the same day bought the goods in the market and paid toll on them (*Black v Sackett* (1869) 10 B & S 639). As to tolls see PARAS 1028-1035 ante.

8 As to the meaning of 'person' see PARA 1012 note 3 ante.

9 This provision also refers to licensed hawkers, but the Local Government Act 1966 ss 35(1), 43(2), Sch 3 Pt I, Sch 6 (all repealed) repealed the Hawkers Act 1888 s 3(1)-(3), which required hawkers to take out licences annually. However, 'licensed hawker' in the Markets and Fairs Clauses Act 1847 s 13 (as amended), includes a certificated pedlar (see the Pedlars Act 1871 s 6 (amended by the Pedlars Act 1881 s 2, Schedule)), but the certificated pedlar must be trading as a pedlar: see *Woolwich Local Board of Health v Gardiner* [1895] 2 QB 497, DC. As to pedlars see PARA 1117 et seq post.

10 This prohibition applies to every day of the week unless the local Act restricts it to market days: *Hailsham Cattle Market Co v Tolman* [1915] 1 Ch 360; affd [1915] 2 Ch 1, CA.

11 'Prescribed' means prescribed or provided for that purpose in the special Act: see the Markets and Fairs Clauses Act 1847 s 2. Where the special Act provides that it will be in force in a district without prescribing the limits, the prescribed limits will, it seems, be the boundaries of the district as extended from time to time: see *Collier v Worth* (1876) 1 Ex D 464; *Killmister v Fitton* (1885) 53 LT 959, DC. In the case of a market under the Animal Health Act 1981 (see PARA 1017 ante), the limits of the land acquired or appropriated for the purposes of the market are the prescribed limits: s 54(3).

12 Markets and Fairs Clauses Act 1847 s 13. If the special Act only authorises stallages or rents to be taken the prohibition does not apply (*Caswell v Cook* (1862) 11 CBNS 637); and if the special Act only authorises tolls to be levied on a cart containing an article, the selling of that article is not an offence (*Jenkins v Thomas* (1910) 104 LT 74, DC). For decisions under local Acts as to article the sale of which was prohibited by those Acts see *Llandaff and Canton District Market Co v Lyndon* (1860) 8 CBNS 515 (where a horse was held to be an 'article' within the meaning of a provision similar to the Markets and Fairs Clauses Act 1847 s 13 (as amended)); cf *Daly v Cannon* [1954] 1 All ER 315, [1954] 1 WLR 261, DC (a decision under the Public Health Act 1936 s 154(1) (now repealed), where a goldfish was held not to be an article); *Shepherd v Folland* (1884) 49 JP 165, DC (potatoes); *Morgan v Kingdon* (1875) 39 JP 471 (gingerade); *Loftos v Gleave* (1890) 55 JP 149, DC (hat-guards); *Loftos v Kiggins* (1890) 55 JP 151, DC (fish); *Quilligan v Limerick Market Trustees* (1884) 14 LR Ir 265 (milk); *Johnson v Atkinson* (1909) 101 LT 637, DC (coal); *Wake v Dyer* (1911) 104 LT 448, DC (sale by agent). See also *R (UDC of Portadown) v Armagh Chairman and Justices* [1931] NI 209 (goldfish a thing within the enactment referring to articles and things).

13 *Lambert v Rowe* [1914] 1 KB 38, DC. As to the meaning of 'sale' see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 1. See also FOOD vol 18(2) (Reissue) PARA 262.

14 *Stretch v White* (1861) 25 JP 485; *Bourne v Lowndes* (1858) 22 JP 354; and see *Lambert v Rowe* [1914] 1 KB 38, DC; *Exeter Corp'n v Heaman* (1877) 37 LT 534, DC; *Torquay Market Co v Burridge* (1883) 48 JP 71, DC; *Jenkins v Thomas* (1910) 104 LT 74, DC, per curiam.

15 *White v Yeovil Corp'n* (1892) 61 LJMC 213, DC. To the same effect are the following decisions on local Acts containing sections similar to the Markets and Fairs Clauses Act 1847 s 13 (as amended): *Newton-in-Makerfield Urban Council v Lyon* (1900) 69 LJQB 230; *Philpott v Allright* (1906) 94 LT 540, DC; *Webber v Adams* (1869) IR 5 CL 146, Ex Ch. In *Luke v Charles* (1861) 25 JP 148, it was held that under a provision in a local Act which imposed penalties for exposing tollable articles for sale, a person was not liable to a penalty for exposing a stallion on view, although by the Act a toll was payable for exposing stallions on view in the market. See also the cases cited in FOOD vol 18(2) (Reissue) PARA 282.

16 It is in each case a question of fact whether the place is or is not a dwelling place or shop. A shed attached to a house may be part of a dwelling place (*Ashworth v Heyworth* (1869) LR 4 QB 316), but a yard attached is not (*Llandaff and Canton District Market Co v Lyndon* (1860) 8 CBNS 515). As to what constitutes a shop see *Wiltshire v Baker* (1861) 11 CBNS 237; see also *Perkins v Arber* (1873) 37 JP 406. In considering whether a particular structure is a shop, elements to be taken into account are its permanency, its suitability for storing goods, whether it admits of persons coming inside, and the nature and duration of the tenancy of the person using it: *Pope v Whalley* (1865) 6 B & S 303; *Ashworth v Heyworth* supra; *Hooper v Kenshole* (1877) 2 QBD 127. A shop is properly a place not only for selling, but for storing, goods: *Pope v Whalley* supra; *Haynes v Ford* [1911] 2 Ch 237 at 248, CA, per Cozens-Hardy MR. A stall is not a shop (*Pike v Jones* (1922) 128 LT 373, DC; *Greenwood v Whelan* [1967] 1 QB 396, [1967] 1 All ER 294, DC), nor is a yard for selling cattle (*Fearon v Mitchell* (1872) LR 7 QB 690; *McHole v Davies* (1875) 45 LJMC 30), nor are individual trading units within a converted department store (*Manchester City Council v Walsh* (1985) 50 P & CR 409, CA); but the mere fact that goods are sold by auction or sold wholesale and partly on commission, is not conclusive that the place is not a shop (*Wiltshire v Willett* (1861) 11 CBNS 240; *Hailsham Cattle Market Co v Tolman* [1915] 1 Ch 360 at 367 per Sargant J; affd [1915] 2 Ch 1, CA; *Haynes v Ford* supra).

17 *Fearon v Mitchell* (1872) LR 7 QB 690. As to the setting up of a rival market see PARA 1052 ante.

18 *Rutherford v Straker* (1887) 42 ChD 85n; *Hailsham Cattle Market Co v Tolman* [1915] 1 Ch 360 at 367 per Sargant J.

UPDATE

1058 Protection under the Markets and Fairs Clauses Act 1847

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(5) DISTURBANCE/(iii) Statutory Protection/1059. Protection under the Food Act 1984.

1059. Protection under the Food Act 1984.

Any person, other than a certificated pedlar¹, who on a market day and during market hours² sells or exposes for sale³ in any place within the area of the market authority⁴ and within such distance from the market as the authority may by byelaw declare⁵, except in his own dwelling place⁶ or shop⁷ or in or at the door of any premises to a person resident in those premises, any articles specified in the byelaw⁸, being articles commonly sold in the market, is liable to a fine⁹. The market authority must keep conspicuously exhibited in the vicinity of the market notices stating the effect of such byelaws¹⁰.

The Food Act 1984 does not extend to the levying of rival markets¹¹ and thus cannot be relied on to defeat a common law franchise to hold a market¹².

1 As to pedlars see PARA 1117 et seq post; and PARA 1058 note 9 ante.

2 Cf para 1058 note 9 ante. As to market days and hours see PARA 1068 et seq post. For the meaning of 'market' see PARA 1001 ante.

3 As to the meaning of 'sale' see PARA 1058 text and notes 14-18 ante.

4 As to the market authority see PARA 1015 ante.

5 As to byelaws under the Food Act 1984 see PARA 1089 post.

6 As to whether a place is a dwelling place see PARA 1058 note 16 ante.

7 As to whether a place is a shop see PARA 1058 note 16 ante.

8 As to articles which may be within the prohibition although not specifically mentioned see PARA 1058 note 12 ante.

9 Food Act 1984 s 56(1) (amended by the Food Safety Act 1990 s 52, Sch 2 para 6). The fine must not exceed level 2 on the standard scale: Food Act 1984 s 56(1). As to the standard scale see PARA 1012 note 6 ante. Section 56(1) does not apply to a sale or exposure for sale in a person's own dwelling place or shop, or in, or at the door of, any premises to a person resident in those premises: s 56(1) proviso. Such an offence is triable summarily: see s 93(1), (2)(a), (3)(g). No prosecution for an offence under the Food Act 1984 or regulations made under that Act which is triable either summarily or on indictment may be begun after the expiry of three years from the commission of the offence, or one year from its discovery by the prosecutor, whichever is the earlier: s 95(1). As to offences by corporations see s 94; and PARA 1045 note 10 ante.

10 Ibid s 56(2). As to persons damaging the notices see the Criminal Damage Act 1971 s 1; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 334.

11 As to the levying of rival markets see PARA 1052 et seq ante.

12 See *Leicester Corp'n v Maby* (1971) 70 LGR 209 (decided under earlier legislation).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(6) EXTINCTION/(i) Forfeiture and Ouster/1060. Grounds of forfeiture.

(6) EXTINCTION

(i) Forfeiture and Ouster

1060. Grounds of forfeiture.

A franchise of market or fair¹ granted by the Crown² is liable to forfeiture to the Crown for neglect or abuse³, which may consist in (1) non-user⁴; (2) continued failure by the owner to discharge his duty of providing accommodation for the holding of the market or fair⁵; (3) an unauthorised change of the market or fair day⁶; or (4) the taking of excessive toll⁷. Neglect of the right to take toll is not a ground of forfeiture of the market or fair⁸ or of the franchise of toll⁹.

Neglect or abuse of a market or fair¹⁰ does not of itself destroy the franchise¹¹. The franchise is granted upon the implied condition that it be duly exercised, and if this condition is broken there is ground for forfeiture¹². However, the Crown may waive the forfeiture, as by accepting rent for a market held in fee farm¹³; and no person other than the Crown may take advantage of the forfeiture¹⁴. A fair created by franchise cannot be abandoned¹⁵.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante. As to franchise see PARAS 1001-1003 ante.

2 As to grants by the Crown see PARA 1004 ante.

3 3 Cru Dig (4th Edn) 268 (xxvii Franchises, s 100); Com Dig, Market (1); 15 Vin Abr, Market (F); Bac Abr, Fairs and Markets (C).

4 *Leicester Forest Case* (1607) Cro Jac 155 per Coke CJ; Com Dig, Liberties (C 1); cf the text and note 9 infra.

5 *Re Islington Market Bill* (1835) 3 Cl & Fin 513 at 519, HL, per Littledale J; *Manchester Corp'n v Peverley* (1876) 22 ChD 294n per Little V-C. As to the duty in this respect see PARAS 1021 ante, 1080 post.

6 See PARA 1068 post.

7 See Com Dig, Market (1); and PARA 1034 ante. As to the nature of toll see PARA 1028 ante.

8 *Duke of Newcastle v Worksop UDC* [1902] 2 Ch 145 at 156 per Farwell J.

9 *Leicester Forest Case* (1607) Cro Jac 155 per Coke CJ. According to 3 Cru Dig (4th Edn) 270 (xxvii Franchises, s 109), non-user of a franchise creates a presumption that it has been surrendered to the Crown. In *Duke of Newcastle v Worksop UDC* [1902] 2 Ch 145 at 157, 158, Farwell J thought that there was great difficulty in presuming the extinction of 'the subordinate franchise' of toll; that the franchise of toll, if surrendered or forfeited, would vest in the Crown, and that it was not easy to see how the franchise of fair could be in the lord and the franchise of toll in the Crown. However, in *R v Maidenhead Corp'n* (1620) Palm 76 at 82, the court agreed that the toll, being neither incident nor subordinate to the market, could be forfeited and the market remain.

10 If a fair becomes unfrequented and is therefore to that extent discontinued, the right remains unimpaired: *Marquis of Downshire v O'Brien* (1887) 19 LR Ir 380 at 389 per Chatterton V-C.

11 *Peter v Kendal* (1827) 6 B & C 703 at 710 per Bayley J; *Great Eastern Ry Co v Goldsmid* (1884) 9 App Cas 927 at 946, HL, per Lord Selborne LC; and see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 251. Neglect or abuse of a market does not justify the setting up of a rival market: see PARA 1057 ante.

12 *City of London v Vanacre* (1699) 12 Mod Rep 269 at 271 per Holt CJ.

- 13 *Lord Midleton v Power* (1886) 19 LR Ir 1.
- 14 *Lord Midleton v Power* (1886) 19 LR Ir 1; *Re Islington Market Bill* (1835) 3 Cl & Fin 513, HL; *Duke of Newcastle v Worksop UDC* [1902] 2 Ch 145 at 158 per Farwell J.
- 15 *Wyld v Silver* [1963] 1 QB 169, [1962] 3 All ER 309, CA.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(6) EXTINCTION/(i) Forfeiture and Ouster/1061. Process of forfeiture and effect of forfeiture.

1061. Process of forfeiture and effect of forfeiture.

Scire facias¹ is the proper procedure for the repeal of a grant improperly obtained or for forfeiture for misuse or abuse². However, a market or fair³ is not extinguished by forfeiture; it continues to exist in the Crown until it is regranted except where the original grant is repealed⁴.

1 As to scire facias see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 264.

2 See *Butler's Case* (1680) 2 Vent 344, HL; *R v Aires* (1717) 10 Mod Rep 258 at 354; *Anon* (1409) YB 11 Hen 4, fo 5, pl 13; *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927 at 964-965, HL, per Lord Fitzgerald; *A-G v Colchester Corp* [1955] 2 QB 207 at 215, [1955] 2 All ER 124 at 127 per Lord Goddard CJ. The procedure by way of information in the nature of a quo warranto was abolished by the Administration of Justice (Miscellaneous Provisions) Act 1938 s 9 (repealed: see now the Supreme Court Act 1981 s 30), but an injunction may be obtained instead: see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 251 et seq.

3 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

4 2 Co Inst 222; *Heddy v Wheelhouse* (1597) Cro Eliz 591; *Abbot of Strata Mecella Case* (1591) 9 Co Rep 24a at 25b; *Peter v Kendal* (1827) 6 B & C 703 at 710 per Bayley J. As to the effect of a regrant upon exemptions from tolls see PARA 1043 ante.

UPDATE

1061 Process of forfeiture and effect of forfeiture

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(6) EXTINCTION/(i) Forfeiture and Ouster/1062. Statutory markets.

1062. Statutory markets.

Markets, fairs¹ and tolls² which have been created by Act of Parliament are not liable to forfeiture to the Crown, and cannot be called into question by any process of scire facias³. However, if the statutory rights are exceeded, the acting in excess can be restrained at the suit of the Attorney General⁴.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 As to tolls see PARAS 1028-1035 ante.

3 See PARA 1009 ante. As to scire facias see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 264.

4 *A-G v Tynemouth Corpn* (1900) 17 TLR 77 at 78. As to the Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(6) EXTINCTION/(ii) Supersession and Abolition/1063. Statute or new charter.

(ii) Supersession and Abolition

1063. Statute or new charter.

A franchise market or fair¹, or franchise tolls², may be extinguished by an Act of Parliament which creates the right, or larger or different rights of the same nature or character, in favour of the grantee, provided the Act so intends. If a person has franchises by prescription, and the Sovereign grants him the same liberties by charter, he cannot afterwards claim them by prescription³.

1 *Manchester Corpn v Lyons* (1882) 22 ChD 287, CA; *Manchester Corpn v Peverley* (1876) 22 ChD 294n; *Bishopsgate Motor Finance Corpn Ltd* [1949] 1 KB 322, [1949] 1 All ER 37, CA; and see *Re Salisbury Railway and Market House Co Ltd* [1969] 1 Ch 349, [1967] 1 All ER 813. For the meanings of 'market' and 'fair' and as to franchise see PARAS 1001-1003 ante.

2 *New Windsor Corpn v Taylor* [1899] AC 41, HL. As to tolls see PARAS 1028-1035 ante.

3 Com Dig, Prescription (G), cited by A L Smith LJ in *Taylor v New Windsor Corpn* [1898] 1 QB 186 at 196, CA (on appeal [1899] AC 41, HL); 3 Cru Dig (4th Edn) 428 (xxxi Prescription, s 40), citing Finch, bk 1, c 3, s 23, who cites *Anon* (1506) YB 21 Hen 7, fo 5; but the decision in the Year Book, and *Goodson v Duffield* (1612) Cro Jac 313, seems to be adverse to the proposition in the text. It is submitted that it is a question of construction, whether the grant supersedes or merely confirms the rights by prescription.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(6) EXTINCTION/(ii) Supersession and Abolition/1064. Power by order to abolish lawful fairs.

1064. Power by order to abolish lawful fairs.

The Secretary of State¹ is empowered, with the written consent of the owner² of a fair³, or of the tolls⁴ or dues payable in respect of it, to order that a fair be abolished⁵. The order can only be made upon a representation made to him either by the council of the district or London borough in which the fair is held, or by the owner of the fair⁶.

1 The Fairs Act 1871 s 3 (as amended) refers to the Secretary of State for the Home Department, however certain functions of the Home Secretary in relation to fairs have been transferred to the Secretary of State for Trade and Industry: see the Transfer of Functions (Miscellaneous) Order 2001, SI 2001/3500, art 6. As to the Home Secretary see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 466. As to the Secretary of State for Trade and Industry see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 506; TRADE AND INDUSTRY vol 97 (2010) PARA 802.

2 'Owner' means any person or persons or body of commissioners, or body corporate entitled to hold any fair, whether in respect of the ownership of any lands or tenements or under any charter, letters patent, or Act of Parliament, or otherwise howsoever: Fairs Act 1871 s 2

3 For the meaning of 'fair' see PARA 1002 ante.

4 As to tolls see PARAS 1028-1035 ante.

5 See the Fairs Act 1871 s 3 (amended by virtue of the Local Government Act 1894 ss 21(3), 27(1)(e); and by virtue of the Local Government Act 1972 ss 1(10), 179(3)).

6 See the Fairs Act 1871 s 3 (as amended: see note 5 supra). As to the procedure for abolition see PARA 1065 post.

UPDATE

1064 Power by order to abolish lawful fairs

NOTE 1--See the Secretaries of State for Children, Schools and Families, for Innovation, Universities and Skills and for Business, Enterprise and Regulatory Reform Order 2007, SI 2007/3224, art 14.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(6) EXTINCTION/(ii) Supersession and Abolition/1065. Procedure for obtaining an order.

1065. Procedure for obtaining an order.

Notice of a representation that a fair be abolished¹ and of the time when the Secretary of State² will take it into consideration must be published once in the London Gazette, and in three successive weeks in some one and the same newspaper published in the county, city or district in which the fair is held, or, if there is no newspaper there, then in the newspaper of a county adjoining or near to it³.

As soon as the order has been made, notice of the making must be published in the London Gazette and in one newspaper published as above⁴.

When these conditions have been complied with the fair is abolished⁵.

1 le under the Fairs Act 1971 s 3 (as amended): see PARA 1064 ante.

2 As to the power of the Secretary of State see PARA 1064 ante. The proviso to the Fairs Act 1871 s 3 refers to the Secretary of State for the Home Department, however certain functions of the Home Secretary in relation to fairs have been transferred to the Secretary of State for Trade and Industry: see the Transfer of Functions (Miscellaneous) Order 2001, SI 2001/3500, art 6. As to the Home Secretary see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 466. As to the Secretary of State for Trade and Industry see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 506; TRADE AND INDUSTRY vol 97 (2010) PARA 802.

3 Fairs Act 1871 s 3 proviso.

4 Ibid s 4.

5 Ibid s 4.

UPDATE

1065 Procedure for obtaining an order

NOTE 2--See the Secretaries of State for Children, Schools and Families, for Innovation, Universities and Skills and for Business, Enterprise and Regulatory Reform Order 2007, SI 2007/3224, art 14.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(6) EXTINCTION/(ii) Supersession and Abolition/1066. Suppression of unauthorised fairs in the Metropolitan Police District.

1066. Suppression of unauthorised fairs in the Metropolitan Police District.

Special statutory powers exist to deal with unlawful fairs¹ in the Metropolitan Police District². If it appears to the Metropolitan Police Commissioner³ that any fair held within the #Metropolitan Police District has been held without authority or for a longer period than is so warranted, the owner or occupier of the ground upon which the fair is held may be summoned to appear before a magistrate to show his right and title to hold the fair, or to hold it beyond a given period⁴. If the owner or occupier fails to attend, or fails to show sufficient cause that the holding of the fair is lawful, the magistrate may declare, in writing, the fair to be unlawful, either altogether or beyond a stated period, as the case may be, and the Metropolitan Police Commissioner must give notice of the declaration by causing copies of it to be affixed on the parish church and on other public places in and near the ground where the fair has been held⁵.

However, when summoned before the magistrate, the owner or occupier of the ground may enter into a recognisance⁶ to appear in the High Court on the first day of the then next term to answer any information which the Attorney General⁷ may exhibit against him regarding his right or title to the fair, and to abide by the judgment of the court⁸. If such a recognisance is given, the Metropolitan Police Commissioner must forbear from giving notice of the magistrate's declaration and from taking any further measures on such declaration, until the High Court has given judgment⁹. If there is any attempt to hold a fair contrary to the terms of the declaration after the notice of the declaration has been affixed for six days, the police have the same powers and the same penalties are incurred as when a fair is declared unlawful after an inquiry¹⁰.

1 For the meaning of 'fair' see PARA 1002 ante.

2 As to extent of the Metropolitan Police District see POLICE vol 36(1) (2007 Reissue) PARA 137.

3 As to the powers of the Metropolitan Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 178 et seq.

4 See the Metropolitan Police Act 1839 s 39 (amended by the Statute Law Revision Act 1874 (No 2)). The summons is served on the direction of the Commissioner of Police and is returnable not less than eight days after service: see the Metropolitan Police Act 1839 s 39 (as so amended).

5 See *ibid* s 39 (as amended: see note 4 *supra*).

6 *le* a recognisance in the sum of £200: *ibid* s 40.

7 Any function of the Attorney General may be exercised by the Solicitor General: Law Officers Act 1997 s 1(1). As to the Attorney General and the Solicitor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529.

8 Metropolitan Police Act 1839 s 40 (amended by the Statute Law Revision Act 1874 (No 2); and the Law Officers Act 1997 s 3(2), Schedule); Supreme Court of Judicature (Consolidation) Act 1925 s 18(2)(a) (repealed: the High Court's jurisdiction is preserved by the Supreme Court Act 1981 s 19(2)). The magistrate must transmit the recognisance to the Secretary of State, who may have it filed in the High Court and may give further directions: Metropolitan Police Act 1839 s 40. As to the Secretary of State see PARA 1023 note 3 ante.

9 *Ibid* s 40. See note 8 *supra*.

10 See *ibid* s 39 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the powers and penalties after an inquiry see the Metropolitan Fairs Act 1868 s 2 (as amended); and PARA 1067 post.

UPDATE

1066 Suppression of unauthorised fairs in the Metropolitan Police District

NOTE 8--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/1. THE RIGHT OF MARKET/(6) EXTINCTION/(ii) Supersession and Abolition/1067. Inquiry as to the legality of fairs in the Metropolitan Police District.

1067. Inquiry as to the legality of fairs in the Metropolitan Police District.

Where any fair¹ is held, or notice is given of any fair proposed to be held on any ground within the Metropolitan Police District², other than that on which a fair has been held during each of the seven years immediately preceding, the owner or occupier of the ground may be summoned to show his right and title to hold the fair³. If the owner or occupier does not attend, or fails to show sufficient cause for the magistrate to believe that the fair is lawfully held, the magistrate must declare in writing the fair to be unlawful, and the Commissioner of Police must give notice of the declaration by causing copies of it to be affixed on or near the ground where the fair is held or proposed to be held⁴.

After the notice has been affixed for six days, the Commissioner of Police may direct any constable⁵ to remove every booth, standing and tent, and every carriage of whatever kind conveyed to or being upon the ground for the purpose of holding or continuing the fair⁶. Any person erecting, pitching or fixing any booth, standing or tent, or assisting in it, and any person hiring, accompanying or conveyed in those carriages, and any person resorting to that ground with any show or instrument of gambling or amusement is guilty of an offence and is liable on summary conviction to a penalty⁷.

1 For the meaning of 'fair' see PARA 1002 ante.

2 As to extent of the Metropolitan Police District see POLICE vol 36(1) (2007 Reissue) PARA 137.

3 Metropolitan Fairs Act 1868 s 2. The summons is served on the direction of the Commissioner of Police, and the owner or occupier may be summoned to appear forthwith or at a time to be specified in the summons: s 2. The summons may be served personally or by leaving it at the usual or last known place of abode of the owner or occupier. If his name or place of abode is not known to the police, the summons may be served by putting it up in a conspicuous place in the fair ground. It is not necessary to name the owner or occupier; he may be described as the owner or occupier in the summons: s 3. The powers under the Metropolitan Fairs Act 1868 are additional to those set out in PARA 1066 ante: see s 4. As to the Commissioner of Police see POLICE vol 36(1) (2007 Reissue) PARA 183 et seq.

4 Ibid s 2.

5 As to the office of constable see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

6 See the Metropolitan Police Act 1839 s 39.

7 Ibid s 39 (amended by the Police and Criminal Evidence Act 1984 ss 26, 119, Sch 6 para 2, Sch 7 Pt I). The penalty must not exceed level 1 on the standard scale: Metropolitan Police Act 1839 s 39 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 1012 note 6 ante.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(1) DAYS AND HOURS/1068. Markets and fairs to be held on the proper days.

2. THE HOLDING OF MARKETS AND FAIRS

(1) DAYS AND HOURS

1068. Markets and fairs to be held on the proper days.

Markets and fairs¹ held by grant of the Crown² must be held on the days specified in the grant³, and markets and fairs held by prescription⁴ must be held on the accustomed days, unless in either case the days have been lawfully changed⁵.

If the day for holding a market co-incides with the day for holding a fair within the same manor, both of them may be held on that day; neither franchise is merged in the other⁶.

If the grantee of a market or fair unlawfully changes the day, the market or fair is liable to be forfeited to the Crown⁷. Toll⁸ cannot legally be claimed in a market or fair while held on the wrong day⁹.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 As to grant by the Crown see PARA 1004 et seq ante.

3 15 Vin Abr, Market (F); Com Dig, Market (I).

4 As to markets by prescription see PARA 1008 ante. As to prescription generally see EASEMENTS AND PROFITS A PRENDRE.

5 As to lawful change of day see PARAS 1071-1073 post. For the hours of fairs in London see PARA 1075 post. As to the holding of temporary markets see PARA 1020 ante.

6 *Duke of Newcastle v Worksop UDC* [1902] 2 Ch 145; and see PARA 1003 ante.

7 See PARA 1060 ante; 15 Vin Abr, Market (F); Com Dig, Market (I); *Duke of Newcastle v Worksop UDC* [1902] 2 Ch 145 at 158 per Farwell J. There can be no forfeiture to the Crown of a statutory market or fair: see PARA 1062 ante. As to statutory markets see PARA 1009 ante.

8 As to the nature of toll see PARA 1028 ante.

9 *Duke of Newcastle v Worksop UDC* [1902] 2 Ch 145.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(1) DAYS AND HOURS/1069. Unlawful extension of period.

1069. Unlawful extension of period.

If a market¹ is held on the authorised day and also without authority on an additional day, the market held on the additional day is not a lawful market, and the Attorney General² may take proceedings to suppress it³.

The question whether a fair⁴ within the Metropolitan Police District⁵ has been held longer than the lawful period may be decided in summary proceedings⁶.

1 For the meaning of 'market' see PARA 1001 ante.

2 As to the Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529.

3 *A-G v Horner* (1884) 14 QBD 245, CA; on appeal (1885) 11 App Cas 66, HL.

4 For the meaning of 'fair' see PARA 1002 ante.

5 As to the extent of the Metropolitan Police District see the London Government Act 1963 s 76(1) (as substituted); and POLICE vol 36(1) (2007 Reissue) PARA 137.

6 See PARA 1066 ante.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(1) DAYS AND HOURS/1070. Unlawful days for exposing goods.

1070. Unlawful days for exposing goods.

The repeal of the former statutory prohibition¹ of the exposure for sale of certain goods in a market or fair² on a Sunday, Good Friday, Ascension Day, Corpus Christi Day, Assumption Day or All Saints' Day does not have the effect of requiring a market or fair to be held on any such day; and a market or fair may be held on any day on which it might have been held³ had that prohibition not been repealed⁴.

A market stall is a place where any retail trade or business is carried on for the purposes of the statutory control of Sunday trading⁵.

1 Ie the Sunday Fairs Act 1448 (repealed).

2 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

3 Grantees who had by special grant sufficient days before or after the feasts were entitled to hold their fairs and markets for the full number of their days, but without recourse to the festival days, Sundays or Good Fridays; and grantees who had no day to hold their fair or market other than the prohibited days might hold it, by the authority of their old grant and without fine or fee to the Crown, within three days next before or next after the feasts, proclamation to certify the day being first made: Sunday Fairs Act 1448 (repealed).

4 Statute Law (Repeals) Act 1969 s 4(1).

5 *Maby v Warwick Corp* [1972] 2 QB 242, [1972] 2 All ER 1198, DC. As to the control of Sunday trading see the Sunday Trading Act 1994; and TRADE AND INDUSTRY vol 97 (2010) PARA 908-917.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(1) DAYS AND HOURS/1071. Change of day by new calendar.

1071. Change of day by new calendar.

The effect of the Calendar (New Style) Act 1750 was to shift to 11 days later in the new calendar the dates for the holding of all markets and fairs¹ which were fixed to certain nominal days of the month or were dependent upon the beginning or any certain day of any month². However, where the dates for markets and fairs had depended upon the date of a movable feast, they continued to depend on it, but in accordance with the new calendar³.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 See the Calendar (New Style) Act 1750 s 4 (amended by the Statute Law Revision Act 1948; and the Statute Law (Repeals) Act 1986).

3 Calendar (New Style) Act 1750 s 3.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(1) DAYS AND HOURS/1072. Change of day by charter.

1072. Change of day by charter.

Although there is no general right in the grantees of a market or fair¹ to change the day for holding it, it would seem that such a change, if authorised by charter or licence of the Crown, may be lawful, and that such a charter or licence may sometimes be presumed².

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 *Manchester Corp'n v Lyons* (1882) 22 ChD 287 at 300, CA, per Jessel MR; *Lord Middleton v Power* (1886) 19 LR Ir 1 at 12 per Hedges E Chatterton V-C; *Duke of Newcastle v Worksop UDC* [1902] 2 Ch 145 at 158 per Farwell J. Sometimes the change was made by order of the justices of assize: 1 Selden Society Publications paras 44, 50.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(1) DAYS AND HOURS/1073. Change of fair day by Secretary of State.

1073. Change of fair day by Secretary of State.

If it appears to a Secretary of State¹, upon representation duly made to him, that it would be for the convenience and advantage of the public that the day or days for holding a fair² should be altered, he may order the alteration³.

The representation must be made either by the owner⁴ of the fair or by the council of the appropriate district or London borough⁵. The representation may be either (1) that the fair be held in each year on some day or days other than that or those on which it used to be held; or (2) that it be held in each year on the day or days on which it used to be held, and also on any preceding or subsequent day or days; or (3) that it be held in each year on or during a less number of days than those on which it used to be held⁶. Due notice of the representation must be given⁷.

The Secretary of State may then consider the representation, and order that the fair be held on such other day or days or on the same day or days and any preceding or subsequent day or days, or on or during any less number of days as he thinks fit⁸. When the order has been made, due notice of it must be published⁹, and thereupon the fair must be held only on the day or days mentioned in the order, and the owner of the fair may take all tolls¹⁰, and do all acts, and enjoy all the rights, powers, and privileges in respect of it, and enforce them, as if the fair were held on the day or days on which it used to be held before the making of the order¹¹.

1 As to the Secretary of State see PARA 1023 note 3 ante.

2 For the meaning of 'fair' see PARA 1002 ante.

3 See the Fairs Act 1873 s 6 (amended by the Statute Law Revision (No 2) Act 1893).

4 'Owner' means any person or persons, or body of commissioners or body corporate, entitled to hold any fair, whether in respect of the ownership of any land or tenement, or under any charter, letters patent, or otherwise howsoever: Fairs Act 1873 s 3.

5 Ibid s 6 (amended by virtue of the Local Government Act 1894 ss 21(3), 27(1)(e), 32, 35; the Local Government Act 1972 ss 1(10), 179(3); the London Government Order 1965, SI 1965/654, art 3(24), Sch 1; and amended by the Access to Justice Act 1999 s 76(2), Sch 10 para 10).

6 Fairs Act 1873 s 6.

7 Ibid s 6 proviso. If the representation has been made by a local authority, the notice must be given to the owner of the fair, and, if made by the owner of the fair, to the local authority; and in any case the notice must be published once in the London Gazette and also in three successive weeks in some one and the same newspaper published in the county, city or borough in which the fair was held, or, if there is no such newspaper published there, in the newspaper of some county adjoining or near to it: s 6 proviso (amended by virtue of the Local Government Act 1894 ss 21(3), 27(1)(e), 32, 35; the Local Government Act 1972 ss 1(10), 179(3); the London Government Order 1965, SI 1965/654, art 3(24), Sch 1; and amended by the Access to Justice Act 1999 ss 76(2), 90(1), Sch 10 para 10, Sch 13 para 5).

8 Fairs Act 1873 s 6.

9 Ie in the London Gazette and in some newspaper as is mentioned in note 7 supra: see ibid s 7.

10 As to tolls see PARAS 1028-1035 ante.

11 Fairs Act 1873 s 7.

UPDATE

1073 Change of fair day by Secretary of State

NOTES 5, 7--Amendments made by Access to Justice Act 1999 Sch 10 para 10, Sch 13 para 5 repealed and treated as if never having had effect: Courts Act 2003 Sch 8 para 53.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(1) DAYS AND HOURS/1074. Days and hours for statutory markets.

1074. Days and hours for statutory markets.

The proper days and hours for holding a market or fair¹ held under a special Act² with which the appropriate provision of the Markets and Fairs Clauses Act 1847 is incorporated³ are the days, if any, which the special Act prescribes⁴, and such other days as the undertakers⁵ from time to time appoint by byelaw made in pursuance of the special Act or of the Markets and Fairs Clauses Act 1847⁶.

A market authority⁷ under the Food Act 1984 may appoint the days on which, and the hours during which, markets are to be held⁸.

A local authority establishing a market under the Animal Health Act 1981⁹ has power from time to time to make byelaws fixing the days and hours for the holding of the market¹⁰, subject to the approval of the appropriate Minister¹¹.

1 For the meaning of 'the market or fair' in this context see PARA 1011 note 1 ante. For the meanings of 'market' and 'fair' generally see PARAS 1001-1002 ante.

2 For the meaning of 'the special Act' see PARA 1011 ante.

3 As to the incorporation of the Markets and Fairs Clauses Act 1847 see PARA 1011 ante.

4 For the meaning of 'prescribed' see PARA 1058 note 11 ante.

5 For the meaning of 'the undertakers' see PARA 1012 note 4 ante.

6 See the Markets and Fairs Clauses Act 1847 s 14; and PARA 1014 ante. As to the power to make such byelaws see s 42 (as amended); and PARA 1086 post. Provisions of local Acts which confer power on a local authority to make byelaws appointing days on which or during which markets or fairs are to be or may be held must be construed as conferring on the authority a power to appoint such days or hours by resolution: Local Government (Miscellaneous Provisions) Act 1976 s 36(1). As to the meaning of 'local Act' see PARA 1047 note 2 ante. For the meaning of 'local authority' see PARA 1047 note 1 ante.

7 For the meaning of 'market authority' see PARA 1015 ante.

8 Food Act 1984 s 52.

9 As to such markets see PARA 1017 ante; and ANIMALS vol 2 (2008) PARA 1124.

10 See the Animal Health Act 1981 s 54(2), which incorporates the Markets and Fairs Clauses Act 1847 s 42 (as amended): see the text and note 6 supra. See further ANIMALS vol 2 (2008) PARA 1124.

11 See the Animal Health Act 1981 s 54(3); and the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554. See further ANIMALS vol 2 (2008) PARA 1124. For the meaning of 'the appropriate Minister' see PARA 1046 note 3 ante.

UPDATE

1074 Days and hours for statutory markets

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement

and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(1) DAYS AND HOURS/1075. Statutory restriction of hours.

1075. Statutory restriction of hours.

The business and amusement of all fairs¹ held within the Metropolitan Police District² must cease at 11 pm and must not begin earlier than 6 am³. If, during the continuance of any such fair, any house, room, booth, standing, tent, caravan, wagon or other place is open within the prohibited hours for any purpose of business or amusement in the place where the fair is held, the person having the care or management of such house or other place is liable to be fined⁴. Persons in the house or other place who do not quit it at the constable's⁵ direction may also be fined⁶.

Restrictions on the hours during which trading may take place on Sundays are contained in the Sunday Trading Act 1994⁷.

1 For the meaning of 'fair' see PARA 1002 ante.

2 As to the extent of the Metropolitan Police District see the London Government Act 1963 s 76(1) (as substituted); and POLICE vol 36(1) (2007 Reissue) PARA 137. As to places of amusement generally see LICENSING AND GAMBLING.

3 Metropolitan Police Act 1839 s 38.

4 Ibid s 38 (amended by the Police and Criminal Evidence Act 1984 s 119(2), Sch 7 Pt I). The fine must not exceed level 1 on the standard scale: Metropolitan Police Act 1839 s 38 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 1012 note 6 ante.

5 As to the office of constable see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

6 Metropolitan Police Act 1839 s 38. The fine must not exceed level 1 on the standard scale: s 38 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46).

7 See the Sunday Trading Act 1994; and TRADE AND INDUSTRY vol 97 (2010) PARA 908 et seq. If a market falls within the definition of a large shop for the purposes of the Sunday Trading Act 1994, the statutory restrictions on Sunday opening hours contained in that Act will apply. A 'large shop' means a shop which has a relevant floor area exceeding 280 square metres (s 1(1), Sch 1 para 1(1)), and a 'shop' means any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods (Sch 1 para 1(1)). See further TRADE AND INDUSTRY vol 97 (2010) PARA 908.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(2) SITUATION AND REMOVAL/(i) Place and Enlargement/1076. Place and area for franchise markets or fairs.

(2) SITUATION AND REMOVAL

(i) Place and Enlargement

1076. Place and area for franchise markets or fairs.

The limits within which a market or fair¹ may lawfully be held are those defined by the grant², and it is not necessary for the owner of the market or fair to own the land on which it is held so long as he has the permission of the owner of the land or some right to possession³. Where a market or fair is granted to be held in a district such as a borough, township or manor, it may be held throughout that district or in any one or more places within it⁴, but where it is granted to be held in a place defined by metes and bounds it must be held within them⁵. Where a market is owned by a local authority or a lord of a manor by a prescriptive title, a court may properly infer that it was originally granted to be held anywhere within the area of the local authority or the manor, even though it has always been held in a particular place within it⁶.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 As to markets held under charter see PARA 1004 ante; and as to the place for holding statutory markets see PARA 1079 post.

3 It seems to be unnecessary that the owner of the market or fair should have the ownership of the soil, provided he has the permission of the owner (*A-G v Horner* (1884) 14 QBD 245, CA (affd (1885) 11 App Cas 66, HL); *Lockwood v Wood* (1841) 6 QB 31); and it seems that there may be a prescriptive right in the nature of an easement to hold a market on the land of another (see *Austin v Whittred* (1746) Willes 623 at 627; *R v--* (1433) YB 11 Hen 6, fo 23, pl 20), but unless he has the soil the market owner may not take stallage (*Elwood v Bullock* (1844) 6 QB 383 at 411 per Lord Denman CJ). As to stallage see PARA 1036 et seq ante. As to prescription generally see EASEMENTS AND PROFITS A PRENDRE.

4 *Re Islington Market Bill* (1835) 3 Cl & Fin 513 at 518, HL (opinion of the judges); *Dixon v Robinson* (1686) 3 Mod Rep 107; *Mosley v Walker* (1827) 7 B & C 40 at 54, HL, per Bayley J; *Hammerton v Earl of Dysart* [1916] 1 AC 57 at 88, 90, HL, per Lord Parker of Waddington. Where the boundaries of an ancient borough have been extended for all purposes by statute, a market held by prescription within the borough may be removed to a place outside the old, but within the new, boundaries: *Dorchester Corp v Ensor* (1869) LR 4 Exch 335.

5 See *Re Islington Market Bill* (1835) 3 Cl & Fin 513 at 518, HL; *Prince v Lewis* (1826) 5 B & C 363 at 374 per Littledale J; *Hammerton v Earl of Dysart* [1916] 1 AC 57 at 88, 90 HL, per Lord Parker of Waddington. A grant to hold a market 'in sive juxta' a certain defined area enables the grantee to hold the market on the land immediately surrounding that area (*A-G v Horner* (1885) 11 App Cas 66, HL), but only on the market days mentioned in the grant (*A-G v Horner (No 2)* [1913] 2 Ch 140, CA).

6 *R v Cotterill* (1817) 1 B & Ald 67; *Baron and Baroness de Rutzen v Lloyd* (1836) 5 Ad & El 456; *Gingell, Son and Foskett Ltd v Stepney Borough Council* [1906] 2 KB 468; affd [1908] 1 KB 115, CA; affd sub nom *Stepney Corp v Gingell, Son and Foskett Ltd* [1909] AC 245, HL.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(2) SITUATION AND REMOVAL/(i) Place and Enlargement/1077. Markets and fairs on highways.

1077. Markets and fairs on highways.

A market or fair¹ may lawfully be held upon a portion of a highway, sufficient room being left for the public to pass and repass, if the dedication of the highway to the public was subject to the right of partial interruption during a certain limited and not unreasonable time for the purposes of the market or fair as often as it might lawfully be held².

When dedicating land to the use of the public, the owner may reserve the right to use it for market purposes³, and when both the dedication of the highway and the market are immemorial, and the market has always been held upon the highway, it may properly be presumed that the dedication was subject to the right to hold the market on it⁴.

Where a market or fair is lawfully held on a highway, an obstruction caused by what is properly done in exercise of the franchise is not an indictable offence, nor is it liable to be abated as a nuisance to the highway⁵. Proceedings in respect of such an obstruction cannot be taken under Acts of Parliament which, without making illegal that which is otherwise legal, merely provide new remedies for nuisances on highways⁶.

It is unlawful to hold a market or fair on land which is reserved by statute for a special purpose not consistent with its use as a place for holding markets or fairs⁷.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 *Elwood v Bullock* (1844) 6 QB 383; and see *Brandon v Barnes* [1966] 3 All ER 296, [1966] 1 WLR 1505, DC.

3 See *A-G v Horner* (1885) 11 App Cas 66, HL, where the court drew the inference from documents and evidence that streets dedicated after the grant of a market in 1682 were dedicated subject to the rights of the owner to extend the market into those streets. In *Gingell, Son and Foskett Ltd v Stepney Borough Council* [1908] 1 KB 115, CA; affd sub nom *Stepney Corp v Gingell, Son and Foskett Ltd* [1909] AC 245, HL, it was held that a statutory dedication of a street was subject to market rights. It has been suggested that the Crown might lawfully grant a franchise to hold a market on an existing highway after proper inquiry: see *A-G v Horner* (1884) 14 QBD 245 at 258, CA, per Brett MR, and at 265 per Lindley LJ; *Gingell, Son and Foskett Ltd v Stepney Borough Council* supra at 132 per Fletcher Moulton LJ; *Elwood v Bullock* (1844) 6 QB 383 at 407 per Lord Denman CJ; see also HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 134.

4 *Elwood v Bullock* (1844) 6 QB 383. Such a presumption will not be made merely from 30 years' user of an ancient highway: *Davis v Harvey* (1887) 3 TLR 800, DC. As to the presumption of market rights from long user see *A-G v Horner (No 2)* [1913] 2 Ch 140 at 169, CA, per Cozens Hardy MR; and see *Brandon v Barnes* [1966] 3 All ER 296, [1966] 1 WLR 1505, DC.

5 *Elwood v Bullock* (1844) 6 QB 383; *Goldsmid v Great Eastern Rly Co* (1883) 25 ChD 511 at 544, CA, per Cotton LJ, and at 554 per Fry LJ; *R v Smith* (1802) 4 Esp 111, as explained in *Gerring v Barfield* (1864) 16 CBNS 597 at 601 by Willes J. As to nuisances and remedies for them see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 322 et seq; NUISANCE.

6 *Goldsmid v Great Eastern Rly Co* (1883) 25 ChD 511, CA; *A-G v Horner* (1884) 14 QBD 245, CA (cases upon the Paving Acts of Geo 3); see also *Ball v Ward* (1875) 33 LT 170. Some statutes contain provisions prohibiting street nuisances except acts done in exercise of market rights: see the Town Police Clauses Act 1847 s 28 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 349); and the Metropolitan Police Act 1839 s 54 (as amended). See also ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1018. For a case where proceedings were taken for statutory nuisance against a market owner who erected stalls for animals on a highway in respect of a nuisance created by the droppings of animals, as the person by whose 'act, default or sufferance the nuisance arises', or as the 'occupier of the premises on which the nuisance arises' see *Draper v Sperring* (1861) 10 CBNS 113. See also NUISANCE vol 78 (2010) PARA 169. Statutes for the prevention of obstructions or other nuisances upon highways ought not to be construed as prohibiting the exercise on them of market rights subject to which the highways exist: *A-G v Horner* (1885) 11 App Cas 66, HL (affg (1884) 14 QBD

245, CA); *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927, HL (affg (1883) 25 ChD 511, CA); and see *Brandon v Barnes* [1966] 3 All ER 296, [1966] 1 WLR 1505, DC. A claim of right to expose goods for sale in a market held on a highway, if made in good faith, will oust the magistrates' jurisdiction on a charge of obstruction: *R (Kennedy) v County Cork Justices* (1911) 45 ILT 217; and see MAGISTRATES vol 29(2) (Reissue) PARA 667. A power to make local byelaws against such nuisances does not justify a byelaw which purports to interfere with such rights: see *Elwood v Bullock* (1844) 6 QB 383.

7 *A-G v Southampton Corp* (1859) 29 LJ Ch 282.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(2) SITUATION AND REMOVAL/(i) Place and Enlargement/1078. Enlargement of market-place.

1078. Enlargement of market-place.

The owner of a market or fair¹ normally has a right of enlarging the place for holding it, similar to the right which he has of changing the place². Where a market has been granted without metes and bounds the market-place may be enlarged or extended from time to time within the authorised limit³.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 As to the right of removal see PARAS 1080-1084 post.

3 *A-G v Horner* (1885) 11 App Cas 66, HL; *A-G v Horner (No 2)* [1913] 2 Ch 140, CA; *Gingell, Son and Foskett Ltd v Stepney Borough Council* [1906] 2 KB 468; affd [1908] 1 KB 115, CA; affd sub nom *Stepney Corp v Gingell, Son and Foskett Ltd* [1909] AC 245, HL. Statutory powers for the 'enlargement' of a market-place have been construed as authorising the erection of a public corn exchange upon a site which, although not adjacent to the market-place, was sufficiently near to have the effect of increasing the space upon which the market was held: *A-G v Cambridge Corp* (1873) LR 6 HL 303. See also PARA 1058 note 11 ante.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(2) SITUATION AND REMOVAL/(i) Place and Enlargement/1079. Place for holding statutory markets.

1079. Place for holding statutory markets.

The place for holding a market or fair¹ established under a local Act² is usually specified in the Act, and where the Markets and Fairs Clauses Act 1847 is incorporated³ it is on the land specified in the special Act⁴ that the market-place and buildings may be constructed and maintained⁵, and the market or fair must be held on that specified land⁶.

Subject to existing rights, a market authority⁷ under the Food Act 1984 has power to establish a market-place or house within its district⁸.

Land for the purposes of markets held under the Animal Health Act 1981⁹ may be acquired within or without the district of the local authority¹⁰, and it seems accordingly that the market may be held outside the district, but the prescribed limits within which the market may be held are the limits of land acquired or appropriated for the purpose of the market¹¹.

1 For the meanings of 'market' and 'fair' generally see PARAS 1001-1002 ante.

2 As to such markets see PARA 1009 et seq ante. As to the removal of statutory markets see PARA 1084 post.

3 As to the incorporation of the Markets and Fairs Clauses Act 1847 see PARA 1011 ante.

4 For the meaning of 'the special Act' see PARA 1011 ante.

5 See the Markets and Fairs Clauses Act 1847 s 10; and PARA 1013 ante.

6 See ibid s 14; and PARA 1014 ante.

7 For the meaning of 'market authority' see PARA 1015 ante.

8 See the Food Act 1984 s 50(1) (as amended); and PARA 1015 ante.

9 As to such markets see PARA 1017 ante.

10 See the Animal Health Act 1981 s 54; and ANIMALS vol 2 (2008) PARA 1124.

11 See ibid s 54(3); and ANIMALS vol 2 (2008) PARA 1124.

UPDATE

1079 Place for holding statutory markets

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(2) SITUATION AND REMOVAL/ (ii) Removal/1080. Right and duty of removal of franchise market or fair.

(ii) Removal

1080. Right and duty of removal of franchise market or fair.

The owner of a market or fair¹ normally has the right to remove it, whenever he thinks fit, to a new place, provided that he keeps within the limits within which his market or fair may lawfully be held, and that he takes care to secure reasonable accommodation for the public². If the old market-place has ceased to afford reasonable accommodation, it may be his duty to change it³.

The owner of market rights is not, however, entitled to sever the right of market itself in order to hold two or more separate same-day markets dealing wholly or in part with the same commodities within the manor at different times⁴.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

2 *Curwen v Salkeld* (1803) 3 East 538; *R v Cotterill* (1817) 1 B & Ald 67; *Baron and Baroness de Rutzen v Lloyd* (1836) 5 Ad & El 456; *Edinburgh Magistrates v Blackie* (1886) 11 App Cas 665, HL.

3 *Mosley v Walker* (1827) 7 B & C 40 at 55 per Bayley J.

4 *Sevenoaks District Council v Pattullo and Vinson Ltd* [1984] Ch 211, [1984] 1 All ER 544, CA.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(2) SITUATION AND REMOVAL/ (ii) Removal/1081. Removal of part of a market.

1081. Removal of part of a market.

A removal¹ need not be of the whole market². A market for the sale of various commodities may be divided, and a new place may be provided for the sale of some only of the commodities, and not of others³.

1 As to the right of removal see PARA 1080 ante.

2 For the meaning of 'market' see PARA 1001 ante.

3 *Wortley v Nottingham Local Board* (1869) 21 LT 582; *Mosley v Walker* (1827) 7 B & C 40 at 54 per Bayley J. See also *Sevenoaks District Council v Pattullo and Vinson Ltd* [1984] Ch 211, [1984] 1 All ER 544, CA; and PARA 1080 ante.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(2) SITUATION AND REMOVAL/ (ii) Removal/1082. Extent of right of removal.

1082. Extent of right of removal.

A removal¹ may only be made within the limits within which the market or fair² may lawfully be held and, if it is tied down to some particular spot by the terms of the grant, it may not be removed elsewhere³. There must also be reasonable accommodation provided in the new place⁴ and removal is unlawful if members of the public are deprived of any right, such as the right to sell or expose for sale their goods without being required to make any payment for so doing⁵. A removal cannot be justified as against particular persons if it deprives them of special market privileges which they had lawfully acquired by grant from the market owner or his predecessors in title, for such a removal would be in derogation of the grant⁶.

1 As to the right of removal see PARA 1080 ante.

2 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

3 *Curwen v Salkeld* (1803) 3 East 538; *R v Cotterill* (1817) 1 B & Ald 67; *Baron and Baroness de Rutzen v Lloyd* (1836) 5 Ad & El 456; *Edinburgh Magistrates v Blackie* (1886) 11 App Cas 665, HL.

4 *Curwen v Salkeld* (1803) 3 East 538; *R v Cotterill* (1817) 1 B & Ald 67; *Baron and Baroness de Rutzen v Lloyd* (1836) 5 Ad & El 456; *Edinburgh Magistrates v Blackie* (1886) 11 App Cas 665, HL.

5 *R v Starkey* (1837) 7 Ad & El 95.

6 *Ellis v Bridgnorth Corp'n* (1863) 15 CBNS 52. It seems that where the owner of a market has held it on the land of another person, the taking of stallage by that other person will be referred prima facie to his ownership of the soil and not to a grant from the owner of the market, and accordingly a removal of the market by its owner on to his own land is prima facie not a derogation of any grant: *Baron and Baroness de Rutzen v Lloyd* (1836) 5 Ad & El 456 at 458n per Lord Denman CJ. As to non-derogation from grant see further EASEMENTS AND PROFITS A PRENDRE. As to stallage see PARAS 1036-1040 ante.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(2) SITUATION AND REMOVAL/ (ii) Removal/1083. Effect of removal.

1083. Effect of removal.

If a removal¹ is lawful and reasonable notice of it has been given, the public may no longer frequent the old market-place², but, if a removal is unlawful, the public may still do so³. The removal of a charter market to an inconvenient place prejudicial to the object of the grant would lay the foundation of a scire facias⁴ by the Crown to repeal the grant⁵.

An unlawful removal cannot justify the wrongful erection of a rival market⁶.

1 As to the right of removal see PARA 1080 ante.

2 *Curwen v Salkeld* (1803) 3 East 538. For the meaning of 'market' see PARA 1001 ante.

3 *R v Starkey* (1837) 7 Ad & El 95.

4 As to scire facias see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 264.

5 *R v Cotterill* (1817) 1 B & Ald 67 at 75 per Lord Ellenborough CJ.

6 *Lord Middleton v Power* (1886) 19 LR Ir 1. As to rival markets see further PARA 1052 et seq ante.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(2) SITUATION AND REMOVAL/ (ii) Removal/1084. Removal of statutory markets.

1084. Removal of statutory markets.

The right of removal¹ of a statutory market² will depend on the terms of its statute, and, if a statute requires a particular place to be devoted to market purposes, it necessarily curtails the right of removal³. Similarly, in the case of a market under a special Act⁴ incorporating the Markets and Fairs Clauses Act 1847⁵, the right of removal will be limited to the area of the land specified in the special Act unless the special Act provides otherwise.

However, in the case of a market under the Food Act 1984⁶, as the market may, subject to existing rights, be established within the district of the local authority, it is removable within those limits subject to those rights; and in the case of a market under the Animal Health Act 1981 the market may be removed by the acquisition or appropriation of other lands⁷.

1 As to the right of removal see PARA 1080 ante.

2 As to statutory markets see PARA 1009 ante. For the meaning of 'market' see PARA 1001 ante.

3 *Edinburgh Magistrates v Blackie* (1886) 11 App Cas 665, HL.

4 As to the special Act see PARAS 1011-1012 ante.

5 As to the incorporation of the Markets and Fairs Clauses Act 1847 see PARA 1011 ante.

6 As to such markets see PARAS 1015-1016 ante.

7 As to such markets see PARA 1017 ante.

UPDATE

1084 Removal of statutory markets

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/ (3) REGULATION BY BYELAW/1085. In general.

(3) REGULATION BY BYELAW

1085. In general.

The owner of a franchise market or fair¹ has no power except under statute of regulating the market by regulations or byelaws enforceable by fine or imprisonment².

In addition to powers of making byelaws conferred specifically in relation to markets and fairs, the council of a district or London borough may make byelaws for good rule and government and for the prevention and suppression of nuisances³, which may control in some respects the conduct at markets or fairs⁴.

Any provision of a local Act⁵ which confers power on a local authority⁶ to make byelaws appointing days on which or hours during which markets or fairs are to be or may be held must be construed as conferring on the authority a power to appoint such days or hours by resolution⁷.

1 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante. As to franchise see PARAS 1001-1003 ante.

2 The common law powers of regulation have either been surrendered or have fallen into disuse. As to the byelaw-making power of a local authority which maintains a market, whether a franchise market or statutory, and whether established or acquired under the Food Act 1984 see PARA 1089 post.

3 See the Local Government Act 1972 s 235(1) (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 555. Local authorities have power to make byelaws for the regulation of pleasure fairs: see the Public Health Act 1961 s 75 (amended by the Local Government (Miscellaneous Provisions) Act 1976 s 22).

4 However, a byelaw cannot be made restraining or prohibiting market rights in streets: *Elwood v Bullock* (1844) 6 QB 383.

5 As to the meaning of 'local Act' see PARA 1047 note 2 ante.

6 For the meaning of 'local authority' see PARA 1047 note 1 ante.

7 Local Government (Miscellaneous Provisions) Act 1976 s 36(1).

UPDATE

1085 In general

NOTE 3--1961 Act s 75 further amended: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/ (3) REGULATION BY BYELAW/1086. Regulation under the Markets and Fairs Clauses Act 1847.

1086. Regulation under the Markets and Fairs Clauses Act 1847.

Persons authorised to construct or regulate markets or fairs¹ by special Acts² incorporating the appropriate provision of the Markets and Fairs Clauses Act 1847³ may make and from time to time repeal or alter byelaws for the following purposes⁴:

- 6 (1) for regulating the use of the market-place and fair, and the buildings, stalls, pens and standings in it, and for preventing nuisances or obstructions there or in the immediate approaches to it⁵;
- 7 (2) for fixing the days and the hours during each day on which the market or fair may be held⁶;
- 8 (3) for inspection of the slaughterhouses⁷, for keeping them in a clean and proper state, for removing filth and refuse at least once in every 24 hours, for requiring that they be provided with a sufficient supply of water and for preventing the exercise of cruelty in them⁸;
- 9 (4) for regulating the carriers resorting to the market or fair and fixing the rates for carrying articles from it within the limits of the special Act⁹; and
- 10 (5) for preventing the sale or exposure for sale of unwholesome provisions¹⁰ in the market or fair¹¹.

1 For the meaning of 'the market or fair' in this context see PARA 1011 note 1 ante. For the meanings of 'market' and 'fair' generally see PARAS 1001-1002 ante.

2 For the meaning of 'the special Act' see PARA 1011 ante.

3 I.e. the undertakers: see PARA 1012 note 4 ante. As to the incorporation of the Markets and Fairs Clauses Act 1847 see PARA 1011 ante. The byelaws must not be repugnant to the laws of that part of the United Kingdom where they are to have effect, or to the provisions of that Act or of the special Act with which those provisions are incorporated, or any Act incorporated with it: Markets and Fairs Clauses Act 1847 s 42.

4 Markets and Fairs Clauses Act 1847 s 42. Model byelaws for the use of district councils establishing or regulating a market were issued by the Minister of Housing and Local Government for the purposes of the Food Act 1984 s 60 (as amended): see PARA 1089 post. The procedure for making byelaws under s 60 (as amended) is laid down in the Local Government Act 1972 s 236 (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 556; and see the Local Government (Miscellaneous Provisions) Act 1976 s 36(1); and PARA 1085 ante.

5 Markets and Fairs Clauses Act 1847 s 42. Instances of byelaws which have been held valid are byelaws providing that no auctioneer should sell cattle by auction before noon on the market day (*Collins v Wells Corpn* (1885) 1 TLR 328, DC; in effect overruled by *Scott v Glasgow Corpn* [1899] AC 470, HL; see *Nicholls v Tavistock UDC* [1923] 2 Ch 18 at 30 per Romer J); appropriating particular parts of the market-place for the sale of particular kinds of commodities (*Savage v Brook* (1863) 15 CBNS 264); appropriating part of the market-place for sales by wholesale (*Strike v Collins* (1886) 55 LT 182, DC); providing that sale rings should only be used for public auction sales (*Scott v Glasgow Corpn* supra); and prohibiting the gutting of dogfish in the market without the leave of the wharfmaster (*Sutton Harbour Improvement Co v Foster* (1920) 89 LJB 829, DC; *Sutton Harbour Improvement Co v Foster (No 2)* (1920) 89 LJCh 540, CA). A byelaw prohibiting persons from exhibiting for sale in the market particular kinds of marketable commodities 'without being authorised so to do by the superintendent of the market' is bad (*Wortley v Nottingham Local Board* (1869) 21 LT 582), as is one prohibiting sales by auction, or prohibiting them without the sanction of the market authority (*Nicholls v Tavistock UDC* [1923] 2 Ch 18). As to the validity of byelaws see LOCAL GOVERNMENT vol 69 (2009) PARA 560 et seq. As to the law of auctions generally see AUCTION.

6 Markets and Fairs Clauses Act 1847 s 42.

7 As to slaughterhouses see FOOD vol 18(2) (Reissue) PARA 470 et seq.

- 8 Markets and Fairs Clauses Act 1847 s 42.
- 9 Ibid s 42.
- 10 As to the sale of unwholesome provisions see PARA 1092 post.
- 11 Markets and Fairs Clauses Act 1847 s 42.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/ (3) REGULATION BY BYELAW/1087. Confirmation of byelaws under the Markets and Fairs Clauses Act 1847.

1087. Confirmation of byelaws under the Markets and Fairs Clauses Act 1847.

Byelaws authorised by special Acts¹ which incorporate the provision of the Markets and Fairs Clauses Act 1847² which provides that they are not to come into force until approved, require the confirmation of the Secretary of State³. Before application can be made for confirmation, notice must be given in one or more local newspapers⁴ one month before⁵ and a copy of the proposed byelaws must be kept open to inspection at the principal office of the undertakers⁶, and another copy put up in some conspicuous place in the market-place one month before the application⁷. Parties aggrieved⁸ may be heard on giving ten days' notice to the undertakers, stating the nature of the objection⁹.

1 For the meaning of 'the special Act' see PARA 1011 ante.

2 As to the incorporation of the Markets and Fairs Clauses Act 1847 see PARA 1011 ante.

3 See *ibid* s 44. As to the Secretary of State see PARA 1023 note 3 ante.

4 In one or more newspapers of the county in which the market or fair is situated, or if there is none in such county, then of an adjoining county: *ibid* s 45. For the meaning of 'the market or fair' in this context see PARA 1011 note 1 ante. For the meanings of 'market' and 'fair' generally see PARAS 1001-1002 ante.

5 *Ibid* s 45.

6 For the meaning of 'the undertakers' see PARA 1012 note 4 ante.

7 Markets and Fairs Clauses Act 1847 s 46.

8 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

9 Markets and Fairs Clauses Act 1847 s 45. The appellant may be heard by counsel, solicitor or agent: s 45.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/ (3) REGULATION BY BYELAW/1088. Publication and enforcement of byelaws.

1088. Publication and enforcement of byelaws.

After confirmation¹, byelaws must be published in the manner, if any, prescribed² by the special Act³. If none is prescribed, the byelaws must be put up in the principal office of the undertakers⁴ and in some conspicuous place in the market-place, and a printed copy must be supplied without charge to every person⁵ applying⁶. The undertakers may impose such reasonable penalties as they think fit for breach of such byelaws⁷.

When the market or fair⁸ is established under the special Act, which incorporates the appropriate provision of the Markets and Fairs Clauses Act 1847⁹, the penalties¹⁰ are recoverable on summary conviction in accordance with the Railways Clauses Consolidation Act 1845¹¹.

1 As to confirmation see PARA 1087 ante.

2 For the meaning of 'prescribed' see PARA 1058 note 11 ante.

3 Markets and Fairs Clauses Act 1847 s 47. For the meaning of 'the special Act' see PARA 1011 ante.

4 For the meaning of 'the undertakers' see PARA 1012 note 4 ante.

5 As to the meaning of 'person' see PARA 1012 note 3 ante.

6 Markets and Fairs Clauses Act 1847 s 47. The original byelaws must be in writing under the common seal of the undertakers if a body corporate, or, if not, under the hands and seals of two of the undertakers: s 42. As to proof of the byelaws and of their publication see s 49; and CIVIL PROCEDURE vol 11 (2009) PARA 895.

7 Ibid s 43. The penalties must not exceed level 1 on the standard scale or a lesser amount for each breach: s 43 (amended by the Statute Law (Repeals) Act 1993; and by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 1012 note 6 ante.

8 For the meaning of 'the market or fair' in this context see PARA 1011 note 1 ante. For the meanings of 'market' and 'fair' generally see PARAS 1001-1002 ante.

9 Ie the Markets and Fairs Clauses Act 1847 s 52. As to incorporation of the Markets and Fairs Clauses Act 1847 see PARA 1011 ante.

10 It is an offence punishable by a fine not exceeding level 1 on the standard scale, and liability to defray the cost of restoring the board, to pull down or injure a notice board put up or affixed for the purpose of publishing any byelaw or any penalty imposed by the special Act: Railways Clauses Consolidation Act 1845 s 144 (amended by the Transport Act 1962 ss 84(4), 92(2), 93(1); and by virtue of the Criminal Justice Act 1982 ss 37, 46); and see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 393. Nothing in the Markets and Fairs Clauses Act 1847 or the special Act is to be deemed to extend to or affect any Act of Parliament relating to her Majesty's duties of customs or excise, or any other revenue of the crown, or to extend to or affect any claim of her Majesty in right of her crown, or otherwise, or any proceedings at law or in equity by or on behalf of her Majesty, in any part of the United Kingdom of Great Britain: see s 54. For the meaning of 'the special Act' see PARA 1011 ante.

11 See the Railways Clauses Consolidation Act 1845 s 145 (as amended) (summary recovery before two justices). Section 154 empowers officers of the undertaking to detain transient offenders and bring them before a justice without warrant or other authority. As to the recovery, enforcement and accounting for penalties imposed by magistrates' courts see MAGISTRATES vol 29(2) (Reissue) PARA 852 et seq.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/ (3) REGULATION BY BYELAW/1089. Byelaws under the Food Act 1984.

1089. Byelaws under the Food Act 1984.

Any local authority¹ which maintains a market², whether or not it is a market authority³, may make byelaws⁴:

- 11 (1) for regulating the use of the market-place, and the buildings, stalls, pens and standings in it⁵;
- 12 (2) for preventing nuisances or obstructions in the market-place, or in its immediate approaches⁶;
- 13 (3) for regulating porters and carriers resorting to the market and fixing the charges⁷ to be made for carrying articles from it within the district⁸; and
- 14 (4) after consulting the fire authority⁹ for the area in which the market is situated, for preventing the spread of fires in the market¹⁰.

A local authority which is a market authority may also make a byelaw for fixing the distance from the market within which the sale or exposure for sale by unauthorised persons of any specified articles commonly sold in the market is to be prohibited¹¹.

The confirming authority for such byelaws is the Secretary of State¹².

1 For the meaning of 'local authority' see PARA 1015 note 1 ante.

2 For the meaning of 'market' generally see PARA 1001 ante.

3 ie whether or not the local authority has established or acquired a market under the Food Act 1984 s 50 (as amended): see PARAS 1015-1016 ante.

4 Ibid s 60.

5 Ibid s 60(a).

6 Ibid s 60(b).

7 As to the meaning of 'charges' see PARA 1045 note 3 ante. As to stallage see PARAS 1036-1040 ante.

8 Food Act 1984 s 60(c).

9 'Fire authority' means an authority exercising the functions of a fire authority under the Fire Services Act 1947: Food Act 1984 s 61 (definition added by the Food Safety Act 1990 ss 52(a), 59(4), Sch 2 paras 1, 11, Sch 5). See FIRE SERVICES vol 18(2) (Reissue) PARA 24.

10 Food Act 1984 s 60(d).

11 See ibid s 56(1) (as amended); and PARA 1059 ante.

12 Ibid s 121(1). As to the procedure for making such byelaws see the Local Government Act 1972 s 236 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 556. As to the penalties in relation to such byelaws see the Local Government Act 1972 s 237; and LOCAL GOVERNMENT vol 69 (2009) PARA 571.

As to the Secretary of State see PARA 1023 note 3 ante. In relation to Wales, the functions of the Secretary of State under the Food Act 1984 are carried out by the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

UPDATE

1089 Byelaws under the Food Act 1984

TEXT AND NOTES 9, 10--For 'fire authority' read 'fire and rescue authority; omit words 'for the area in which the market is situated': 1984 Act s 60(d) (amended by the Fire and Rescue Services Act 2004 Sch 1 para 56; and the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541). 'Fire and rescue authority' in relation to a market, means (1) where SI 2005/1541 applies to the market, the enforcing authority within the meaning given by art 25; or (2) in any other case, the fire and rescue authority under the Fire and Rescue Services Act 2004 for the area in which the market is situated: 1984 Act s 61 (definition substituted by SI 2005/1541).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/ (3) REGULATION BY BYELAW/1090. Byelaws under the Animal Health Act 1981.

1090. Byelaws under the Animal Health Act 1981.

A local authority providing wharves or other places constituting a market¹ has power to make byelaws under the powers conferred by the Markets and Fairs Clauses Act 1847². Byelaws imposing charges for the use of a wharf or other place may also be made by the local authority³.

Byelaws must be approved by the appropriate Minister⁴, and his approval is sufficient without any other approval or allowance where due notice of the application for approval, and publication before application, is made in accordance with the Markets and Fairs Clauses Act 1847⁵.

1 As to such markets see PARA 1017 ante. For the meaning of 'market' generally see PARA 1001 ante.

2 See the Animal Health Act 1981 s 54; and ANIMALS vol 2 (2008) PARA 1124. As to the powers under the Markets and Fairs Clauses Act 1847 see PARA 1086 ante.

3 See *ibid* the Animal Health Act 1981 s 54(4); and PARA 1046 ante.

4 For the meaning of 'the appropriate Minister' see PARA 1046 note 3 ante.

5 Animal Health Act 1981 s 54(3). As to notice of application and publication see PARA 1087 ante. The Markets and Fairs Clauses Act 1847 s 52 (see PARA 1011 ante) is not incorporated with the Animal Health Act 1981 (s 54(2)), and there appears to be no procedure provided for recovery of penalties for breach of byelaws made in respect of markets under that Act.

UPDATE

1090-1091 Byelaws under the Animal Health Act 1981, Conduct in the market

Certain functions under provisions mentioned are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(i) Conduct, Sale and Employment/1091. Conduct in the market.

(4) REGULATION BY STATUTE

(i) Conduct, Sale and Employment

1091. Conduct in the market.

Where the Markets and Fairs Clauses Act 1847 applies to a market or fair¹, the assault or obstruction of any person appointed by the undertakers² to superintend or keep order in the market or fair, whilst in the execution of his duty, is an offence punishable by fine³. It is also an offence to assault or obstruct any person authorised to collect any stallage, rent or toll⁴.

¹ le where it is incorporated in a local Act (see PARA 1011 ante) or in the Animal Health Act 1981 (see PARA 1017 ante). For the meaning of 'the market or fair' in this context see PARA 1011 note 1 ante. For the meanings of 'market' and 'fair' generally see PARAS 1001-1002 ante.

² For the meaning of 'the undertakers' see PARA 1012 note 4 ante.

³ Markets and Fairs Clauses Act 1847 s 16. The offender is liable to a penalty not exceeding level 1 on the standard scale: s 16 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 1012 note 6 ante. As to the recovery of penalties under a local Act see the Markets and Fairs Clauses Act 1847 s 52; and PARA 1011 ante. As to recovery under the Animal Health Act 1981 see s 77.

⁴ See the Markets and Fairs Clauses Act 1847 s 40 (as amended); and PARA 1044 ante. As to stallage see PARAS 1036-1040 ante; and as to tolls see PARAS 1028-1035 ante.

UPDATE

1090-1091 Byelaws under the Animal Health Act 1981, Conduct in the market

Certain functions under provisions mentioned are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1091 Conduct in the market

NOTE 3--Animal Health Act 1981 s 77 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(i) Conduct, Sale and Employment/1092. Sale of unwholesome provisions.

1092. Sale of unwholesome provisions.

It is an indictable offence at common law knowingly to expose for sale in a market¹, as and for sound and wholesome meat fit for human consumption, food which is not so², or to bring or send such food to market knowing it is unfit and that it is intended to be sold as human food³.

1 For the meaning of 'market' see PARA 1001 ante.

2 *R v Stevenson* (1862) 3 F & F 106. As to food unfit for human consumption generally see FOOD vol 18(2) (Reissue) PARA 282 et seq.

3 *R v Jarvis* (1862) 3 F & F 108; *R v Crawley* (1862) 3 F & F 109. As to the offences under the Food Safety Act 1990 relating to the sale or exposure for sale of unsound food, and the powers of seizure and condemnation of unsound food under that Act see FOOD vol 18(2) (Reissue) PARA 282 et seq. As to byelaws for preventing the sale of unwholesome provisions see PARA 1086 ante.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(i) Conduct, Sale and Employment/1093. Sale of intoxicating liquors.

1093. Sale of intoxicating liquors.

A general order of exemption may be granted may be granted to the holders of a justices' on-licence¹ in respect of any premises in the immediate neighbourhood of a market², applying to licensed premises additional permitted hours for the sale of intoxicating liquor³.

An occasional licence for the sale of intoxicating liquor at a fair⁴ is required and may be granted⁵.

1 As to justices' on-licences see LICENSING AND GAMBLING vol 67 (2008) PARA 26.

2 For the meaning of 'market' see PARA 1001 ante.

3 As to orders of exemption and permitted hours in general see LICENSING AND GAMBLING vol 67 (2008) PARAS 26, 84.

4 For the meaning of 'fair' see PARA 1002 ante.

5 As to occasional licences see LICENSING AND GAMBLING vol 67 (2008) PARA 108.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(i) Conduct, Sale and Employment/1094. Sale of fish.

1094. Sale of fish.

An officer of a market authority¹ acting within the limits of a market regulated by that authority has power at all reasonable times to board any fishing boat or enter any premises used for the business of treatment, storage or sale of sea fish² and search for and examine sea fish on board a fishing boat³ or elsewhere and seize any sea fish landed, sold or exposed or offered for sale in contravention of the fish size orders⁴.

An officer of a market authority acting within the area of jurisdiction of that authority may also seize any salmon, trout or freshwater fish⁵ bought, sold or exposed for sale by, or in the possession for sale of, any person in contravention of the Salmon and Freshwater Fisheries Act 1975⁶.

Any officer of a market authority acting within the area of the jurisdiction of that authority may open any package consigned or sent by carrier, or brought to any place to be so consigned or sent, and suspected to contain salmon or trout⁷. If the package is not properly marked, or if it is suspected that the fish contained in any marked package is being dealt with contrary to law, he may detain the package and its contents⁸. He may also detain any such fish not packed in a package⁹.

¹ For the meaning of 'market authority' see the Sea Fish (Conservation) Act 1967 s 22(1); and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 1011.

² For the meaning of 'sea fish' see *ibid* s 22(1) (as amended); and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 969.

³ For the meaning of 'fishing boat' see *ibid* s 22(1); and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 969.

⁴ *Ibid* s 16(1)(c). See further AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 1011.

⁵ For the meaning of 'salmon', 'trout' and 'freshwater fish' see the Salmon and Freshwater Fisheries Act 1975 s 41(1); and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 848.

⁶ *Ibid* ss 37, 41(1), Sch 4 para 7. As to proceedings see further Sch 4; as to restrictions on sale see s 22; as to restrictions on the sale, exposure for sale or possession for sale of shellfish see the Sea Fisheries (Shellfish) Act 1967 ss 16, 17 (both as amended); and as to restrictions on sale and on the handling of salmon see also the Salmon Act 1986 ss 31, 32. See further AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARAS 877, 878.

⁷ See the Salmon and Freshwater Fisheries Act 1975 ss 24(2), 41(1); and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARAS 848, 879.

⁸ See *ibid* s 24(3); and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 879.

⁹ See *ibid* s 24(4); and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 879.

UPDATE

1094 Sale of fish

TEXT AND NOTES--Provision has been made in relation to the registration of fish buyers and sellers and the designation of fish auction sites: see the Registration of Fish Buyers

and Sellers and Designation of Fish Auction Sites Regulations 2005, SI 2005/1605; and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 994.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(i) Conduct, Sale and Employment/1095. Employment of assistants.

1095. Employment of assistants.

Persons employed under contracts of employment in markets are protected by employment legislation¹. The conditions and hours for the employment of children and young persons at shops and stalls in a market² are regulated by the Children and Young Persons Act 1933³.

1 See generally EMPLOYMENT.

2 For the meaning of 'market' see PARA 1001 ante.

3 See the Children and Young Person Act 1933 ss 18, 20 (both as amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARAS 746-768. As to street trading by children see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 748.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(ii) Slaughter-houses/1096. Power to erect slaughter-houses.

(ii) Slaughter-houses

1096. Power to erect slaughter-houses.

Where the undertakers¹ are empowered by the special Act² to provide slaughter-houses they may from time to time erect, on any land³ purchased by them under the provisions of the Markets and Fairs Clauses Act 1847 or the special Act, or any Act incorporated with the Markets and Fairs Clauses Act 1847⁴, any buildings, or set apart and improve any buildings belonging to them, for the slaughtering of cattle⁵. As soon as the slaughter-houses are ready for public use the undertakers must give notice to that effect by the publication of it in some newspaper circulating within the limits of the special Act, and by printed handbills posted on some conspicuous place within those limits⁶.

Nothing in the Markets and Fairs Clauses Act 1847 or the special Act, or any Act incorporated with the Markets and Fairs Clauses Act 1847, protects the undertakers from an indictment for nuisance⁷, or from any other legal proceeding, in respect of any such slaughter-house⁸.

1 For the meaning of 'the undertakers' see PARA 1012 note 4 ante.

2 For the meaning of 'the special Act' see PARA 1011 ante.

3 As to the meaning of 'lands' see PARA 1013 note 5 ante.

4 As to the incorporation of the Markets and Fairs Clauses Act 1847 see PARA 1011 ante.

5 Ibid s 17. 'Cattle' includes horse, ass, mule, ram, ewe, wether, lamb, goat, kid, or swine: s 3.

6 Ibid s 17.

7 As to nuisance generally see NUISANCE.

8 Markets and Fairs Clauses Act 1847 s 18.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(ii) Slaughter-houses/1097. Penalty on slaughtering cattle, etc, elsewhere than in slaughter-houses.

1097. Penalty on slaughtering cattle, etc, elsewhere than in slaughter-houses.

After the expiration of ten days from the publication and posting of the notice to the effect that a slaughter-house is ready for public use¹ no person may slaughter any cattle or dress any carcase for sale as human food or food of man in any place within the limits of the special Act² other than: (1) a slaughter-house which was in use as such before and at the time of the passing of the special Act, and has so continued ever since; or (2) the slaughter-houses made in pursuance of the Markets and Fairs Clauses Act 1847 and the special Act³. Every person who, after such notice, slaughters any such cattle or dresses for sale any such carcass within the limits of the special Act in any place other than one of such slaughter-houses is liable to a penalty⁴ for every such offence⁵.

1 The publication under the Markets and Fairs Clauses Act 1847 s 17: see PARA 1096 ante.

2 For the meaning of 'the special Act' see PARA 1011 ante.

3 Markets and Fairs Clauses Act 1847 s 19.

4 The penalty must not exceed level 1 on the standard scale: *ibid* s 19 (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 1012 note 6 ante.

5 Markets and Fairs Clauses Act 1847 s 19.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(iii) Duties in relation to Weights and Measures/1098. Duties under the Markets and Fairs Clauses Act 1847.

(iii) Duties in relation to Weights and Measures

1098. Duties under the Markets and Fairs Clauses Act 1847.

In markets and fairs¹ to which the clauses of the Markets and Fairs Clauses Act 1847 with respect to weighing goods and carts are applicable², the undertakers³ must provide sufficient and proper weighing houses or places for weighing or measuring the commodities sold in the market or fair, and keep there proper weights, scales and measures, and must appoint proper persons to attend to the weighing and measuring⁴.

Every person⁵ selling or offering for sale any articles in the market or fair must cause them to be weighed by the weights and scales so provided, if required to do so by the buyer⁶.

Tolls⁷, if any, authorised by the special Act⁸ incorporating the Markets and Fairs Clauses Act 1847 must be paid in advance to the person appointed to weigh or measure⁹.

The undertakers must also keep proper machines for weighing carts¹⁰ in which goods are brought within the market or prescribed limits¹¹, and appoint a person to afford the use of such machines to the public for weighing the carts with or without their loading¹².

1 For the meaning of 'the market or fair' in this context see PARA 1011 note 1 ante. For the meanings of 'market' and 'fair' generally see PARAS 1001-1002 ante.

2 I.e. the Markets and Fairs Clauses Act 1847 ss 21, 22 (as amended), s 24. As to the incorporation of the Markets and Fairs Clauses Act 1847 see PARA 1011 ante. These provisions apply to markets established under the Animal Health Act 1981 (as to which see PARA 1017 ante): s 54(2).

3 For the meaning of 'the undertakers' see PARA 1012 note 4 ante.

4 Markets and Fairs Clauses Act 1847 s 21. The weights, scales and measures must be according to the standard weights and measures: s 21. For the relevant provisions see the Weights and Measures Act 1985 ss 7-20 (as amended); and WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARA 66 et seq.

5 As to the meaning of 'person' see PARA 1012 note 3 ante.

6 Markets and Fairs Clauses Act 1847 s 22. It is an offence punishable on summary conviction by a penalty not exceeding level 1 on the standard scale to refuse to cause articles to be weighed on demand: s 22 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 1012 note 6 ante.

7 As to tolls see PARAS 1028-1035 ante.

8 For the meaning of 'the special Act' see PARA 1011 ante.

9 See the Markets and Fairs Clauses Act 1847 s 34; and PARA 1044 ante. In markets established under the Animal Health Act 1981 there appears to be no general power to take tolls for weighing or measuring; but as to tolls for weighing cattle see PARA 1104 post.

10 As to the meaning of 'cart' see PARA 1013 note 8 ante.

11 For the meaning of 'prescribed' see PARA 1058 note 11 ante. See further PARA 1058 note 11 ante.

12 Markets and Fairs Clauses Act 1847 s 24.

UPDATE

1098 Duties under the Markets and Fairs Clauses Act 1847

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(iii) Duties in relation to Weights and Measures/1099. Duty to give information.

1099. Duty to give information.

The person in charge of any vehicle in which, and any other person by whom, animals¹, poultry or other articles are brought for sale in a market² must give to any authorised market officer³ such information as to their number and kind or, in the case of articles on which charges are made by reference to weight, as to their weight, as that officer may require⁴.

1 As to the meaning of 'animal' see PARA 1045 note 8 ante.

2 For the meaning of 'market' see PARA 1001 ante.

3 For the meaning of 'authorised market officer' see PARA 1045 note 12 ante.

4 Food Act 1984 s 59.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(iv) Provision of Cold Stores/1100. Provision of cold stores.

(iv) Provision of Cold Stores

1100. Provision of cold stores.

A market authority¹ may provide a cold air store or refrigerator for the storage and preservation of meat and other articles of food². Any proposal by a market authority to provide a cold air store or refrigerator within the area of another local authority³ requires the consent of that other authority, which must not be unreasonably withheld⁴. Any question whether or not such a consent is unreasonably withheld must be referred to and determined by the Ministers⁵.

1 For the meaning of 'market authority' see PARA 1015 ante.

2 Food Act 1984 s 57A(1) (s 57A added by the Food Safety Act 1990 s 52, Sch 2 para 8). The provisions of the Local Government Act 1972 s 250(1)-(5) (as amended) (which relate to local inquiries) (see LOCAL GOVERNMENT vol 69 (2009) PARA 105) apply for the purposes of the Food Act 1984 s 57A (as added) as if any reference in them to the Local Government Act 1972 included a reference to the Food Act 1984 s 57A (as added): s 57A(4) (as so added).

3 For the meaning of 'local authority' see PARA 1015 note 1 ante.

4 Food Act 1984 s 57A(2) (as added: see note 2 supra).

5 Ibid s 57A(3) (as added: see note 2 supra). 'The Minister' means the Minister of Agriculture, Fisheries and Food and the Secretary of State, acting jointly: see s 132(1). The Food Act 1984 refers to the Minister of Agriculture, Fisheries and Food but since June 2001 the functions of the Ministry of Agriculture, Fisheries and Food have been exercised by the Department for the Environment, Food and Rural Affairs: see No 10 Downing Street Press Release Delivering Effective Government (8 June 2001). In relation to Wales, certain functions of the Minister under the Food Act 1984 are carried out by the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Secretary of State see PARA 1023 note 3 ante.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(v) Accounts/1101. Annual returns of tolls and dues.

(v) Accounts

1101. Annual returns of tolls and dues.

The local authority¹ having control of a market² authorised by the Animal Health Act 1981 must carry to a separate account all sums received by it in respect of tolls, and make such periodical returns to the appropriate Minister³ of its expenditure and receipts as the Minister may require⁴.

1 As to the responsible local authorities see PARA 1017 ante; and ANIMALS vol 2 (2008) PARA 1121.

2 For the meaning of 'market' see PARA 1001 ante.

3 For the meaning of 'the appropriate Minister' see PARA 1046 note 3 ante.

4 Animal Health Act 1981 s 54(5)(a), (6). See further ANIMALS vol 2 (2008) PARA 1124.

UPDATE

1101 Annual returns of tolls and dues

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(v) Accounts/1102. Abstract of annual accounts.

1102. Abstract of annual accounts.

At the end of each financial year the undertakers¹ of a market² established under a local Act incorporating the appropriate provision of the Markets and Fairs Clauses Act 1847³ must cause an account in abstract to be prepared, showing the whole receipt and expenditure of all rents and other money levied by virtue of their statutory powers during that year, with a statement of the balance of that account, duly audited or certified by the chairman of the undertakers, and by the auditors, if any, and they must send a copy of the account to the proper officer of the council of the county or district⁴ in which the market or fair⁵ is situate⁶.

1 For the meaning of 'the undertakers' see PARA 1012 note 4 ante.

2 As to the meaning of 'market' in this context see PARA 1011 note 1 ante. For the meaning of 'market' generally see PARAS 1001 ante.

3 As to the incorporation of the Markets and Fairs Clauses Act 1847 see PARA 1011 ante.

4 The account sent to the proper officer must be open to public inspection at all reasonable hours on payment of 5 pence for every inspection: *ibid* s 50 (amended by virtue of the Decimal Currency Act 1969 s 10(1)).

5 As to the meaning of 'fair' in this context see PARA 1011 note 1 ante. For the meaning of 'fair' generally see PARA 1002 ante.

6 Markets and Fairs Clauses Act 1847 s 50; Local Government Act 1972 s 251(1), Sch 29 para 4(1). The penalty for default is a fine not exceeding level 2 on the standard scale: Markets and Fairs Clauses Act 1847 s 50 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 1012 note 6 ante.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(vi) Markets for Cattle/A. WEIGHING OF CATTLE/1103. Duties under the Markets and Fairs (Weighing of Cattle) Acts.

(vi) Markets for Cattle

A. WEIGHING OF CATTLE

1103. Duties under the Markets and Fairs (Weighing of Cattle) Acts.

Certain duties are imposed¹ on the market authority² of any market or fair³ in which tolls⁴ are for the time being authorised to be taken and actually are taken in respect of cattle⁵, unless exemption is granted⁶. These duties are: (1) to provide and maintain, in or near the market or fair, sufficient and proper buildings or places for weighing cattle brought for sale within the market or fair⁷; (2) to keep there or near to it weighing machines and weights for the purpose of weighing cattle⁸; (3) to appoint proper persons to have charge of such machines and weights, and to afford the use of them to the public for that purpose⁹; and (4) generally, to provide and maintain sufficient and suitable accommodation for weighing cattle¹⁰. Every person selling, offering for sale or buying any cattle in a market or fair provided with accommodation for weighing cattle may, subject to his paying any authorised tolls in that respect, require such cattle to be weighed¹¹.

1 le by the Markets and Fairs (Weighing of Cattle) Acts 1887, 1891 and 1926. The Markets and Fairs (Weighing of Cattle) Act 1887 ss 4, 5, 8, 9 (as amended); the Markets and Fairs (Weighing of Cattle) Act 1891 s 1 (as amended), s 2; the Markets and Fairs (Weighing of Cattle) Act 1926 s 2 (as amended), s 3, Schedule (as amended), were repealed so far as they related to a market authority outside London under the Food and Drugs Acts by the Food and Drugs Act 1938 ss 101, 103, Sch 4 Pt I (repealed). For the provision now applicable to such a market authority see the Food Act 1984 s 57 (as amended); and PARA 1105 post.

2 'Market authority' means the company, corporation or person by whom the tolls in respect of cattle are taken: Markets and Fairs (Weighing of Cattle) Act 1887 s 2. For the provisions applying to a market authority under the Food Act 1984 see PARA 1105 post. As to auction sales in cattle markets see AUCTION. As to tolls see PARAS 1028-1035 ante.

3 For the meanings of 'market' and 'fair' generally see PARAS 1001-1002 ante.

4 It is doubtful whether the provision applies to markets and fairs in which only stallages, or payments in the nature of stallage, are taken. Possibly the phrase 'tolls taken in respect of cattle' used in the Markets and Fairs (Weighing of Cattle) Act 1887 s 2, may be held to include payments in the nature of stallage payable in respect of standing room for cattle. As to stallage see PARAS 1036-1040 ante.

5 For the meaning of 'cattle' see PARA 1044 note 11 ante.

6 le under *ibid* s 9 (amended by the Statute Law (Repeals) Act 1975); Markets and Fairs (Weighing of Cattle) Act 1891 s 1 (repealed); Markets and Fairs (Weighing of Cattle) Act 1926 s 2 (as amended); Food and Drugs Act 1938 Sch 4 Pt I (repealed). The power to exempt any market or fair from the requirements of the Markets and Fairs (Weighing of Cattle) Act 1887 s 9 (as amended), as to the maintenance of facilities for weighing cattle may be exercised with respect to any market or fair and with respect to any auctioneer, where the circumstances are such as to render the enforcement of those requirements inexpedient: see the Markets and Fairs (Weighing of Cattle) Act 1926 s 2 (amended by the Statute Law (Repeals) Act 1975); Food and Drugs Act 1938 Sch 4 Pt I (repealed); Transfer of Functions (Ministry of Food) Order 1955 SI 1955/554. The power to make exemption orders may be delegated to the Meat and Livestock Commission: see the Agriculture Act 1967 s 4(1); and AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1061. As to the compulsory disclosure of weight of bulls, cows, oxen and heifers on sale by auction see AUCTION.

7 See the Markets and Fairs (Weighing of Cattle) Act 1887 s 4. Subject to the provisions of the Markets and Fairs (Weighing of Cattle) Act 1926 an auctioneer must not offer for sale in any market, fair, or mart, in or near

which a weighing machine is provided for the purpose of complying with the provisions of the principal Acts, any cattle which are fit for immediate slaughter unless they have been weighed on the weighing machine and their weight as so ascertained is disclosed to intending purchasers at the time of the offer for sale, either by announcement made by the auctioneer or in some other manner calculated to bring it to their notice: s 1(1). Any auctioneer who offers for sale any cattle in contravention of s 1 is liable on summary conviction to a fine not exceeding level 1 on the standard scale for each head of cattle so offered for sale: s 1(2) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). An order may be made declaring that the provisions of the Markets and Fairs (Weighing of Cattle) Act 1926 s 1(1)-(3) (as amended) do not apply as respects any market, fair or mart: s 1(4). For these purposes, 'cattle' means bulls, cows, oxen and heifers: s 1(3). As to the standard scale see PARA 1012 note 6 ante.

8 See Markets and Fairs (Weighing of Cattle) Act 1887 s 4. In the case of a cattle market held on a highway dedicated subject to market rights, the erection of a permanent weighing machine on such highway may be justifiable under this provision: *McIntosh v Romford Local Board* (1889) 60 LT 185. Where the cattle sale yard in a market was let exclusively by the market authorities to auctioneers, the provision of a weighbridge by the authority in the market, but outside the cattle sale yard, was held to exempt the auctioneers from the necessity of providing a weighbridge within the cattle sale yard: *Knott v Stride* (1913) 109 LT 181.

9 See the Markets and Fairs (Weighing of Cattle) Act 1887 s 4.

10 See the Markets and Fairs (Weighing of Cattle) Act 1891 s 2; and see the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554, art 3. As to the application of the Markets and Fairs (Weighing of Cattle) Act 1891 to auction marts see s 4 (amended by the Statute Law Revision Act 1908; the Statute Law (Repeals) Act 1975; and by virtue of the Criminal Justice Act 1982 ss 37, 46).

11 See the Markets and Fairs (Weighing of Cattle) Act 1887 s 5.

UPDATE

1103 Duties under the Markets and Fairs (Weighing of Cattle) Acts

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(vi) Markets for Cattle/A. WEIGHING OF CATTLE/1104. Tolls for weighing cattle.

1104. Tolls for weighing cattle.

A market authority¹ which performs its duties in relation to weighing cattle² may, unless it is otherwise expressly provided by any Act, take tolls in respect of them³. However, as long as failure to perform the duties continues, it is unlawful for a market authority to demand, receive or recover any toll whatever in respect of any cattle brought to the market or fair for sale⁴.

1 For the meaning of 'market authority' see PARA 1103 note 2 ante.

2 Ie under the Markets and Fairs (Weighing of Cattle) Act 1887 (see PARA 1103 ante): see s 8.

3 See *ibid* s 8. The tolls must not exceed the amounts specified in the Markets and Fairs (Weighing of Cattle) Act 1926 Schedule (as amended), or such other amounts as may be authorised to be taken by the market authority: see the Markets and Fairs (Weighing of Cattle) Act 1887 s 8. The amounts specified by the Markets and Fairs (Weighing of Cattle) Act 1926 s 3, Schedule (repealed), were 6d (now about 2 pence) for every head of cattle, and 3d (now about 1 penny) for every five (or less) sheep or swine. The Markets and Fairs Clauses Act 1847 ss 36-41 (see PARA 1044 ante), apply to these tolls as if the Markets and Fairs (Weighing of Cattle) Act 1887 were the special Act and the market authority were the undertakers: see s 8. For the meaning of 'the special Act' see PARA 1011 ante; and for the meaning of 'the undertakers' see PARA 1012 note 4 ante. As to tolls see PARAS 1028-1035 ante. The tolls for weighing are payable by the person requiring the cattle to be weighed: s 5.

4 Markets and Fairs (Weighing of Cattle) Act 1887 s 4; Markets and Fairs (Weighing of Cattle) Act 1891 s 2. A person who demands or receives any such toll, while the market authority is in default, is liable on summary conviction to a fine not exceeding level 1 on the standard scale: Markets and Fairs (Weighing of Cattle) Act 1887 s 4 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 1012 note 6 ante. As to enforcement of orders of magistrates' courts see MAGISTRATES vol 29(2) (Reissue) PARA 828 et seq. For the meanings of 'market' and 'fair' generally see PARAS 1001-1002 ante.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(vi) Markets for Cattle/A. WEIGHING OF CATTLE/1105. Duties under the Food Act 1984.

1105. Duties under the Food Act 1984.

A market authority¹ within the meaning of the Food Act 1984 in whose market² cattle, sheep or swine are sold must, unless there is in force a declaration of the Minister³ declaring that the circumstances are such as to render compliance unnecessary, provide to the satisfaction of the Minister one or more weighing machines adapted for weighing such animals and must appoint officers to attend to the weighing⁴. An authority which provides such weighing machines may demand in respect of the weighing of the animals such charges as it may from time to time determine⁵.

1 For the meaning of 'market authority' see PARA 1015 ante.

2 For the meaning of 'market' generally see PARA 1001 ante.

3 For the meaning of 'the Minister' para 1100 note 5 ante. The Minister may delegate to the Meat and Livestock Commission his powers under the Food Act 1984 s 57: Agriculture Act 1967 s 4(1) (added by the Food Act 1984 s 134, Sch 10 para 7).

4 Food Act 1984 s 57(2). A weighing machine so provided is, for the purposes of requiring the disclosure of weight of fat cattle sold by auction under the Markets and Fairs (Weighing of Cattle) Act 1926 s 1 (as amended) (see AUCTION), deemed to have been provided for the purpose of complying with the Markets and Fairs (Weighing of Cattle) Act 1887: see the Food Act 1984 s 57(2).

5 See *ibid* s 53(2) (substituted by the Food Safety Act 1990 s 52(a), Sch 2 paras 1, 4); and PARA 1045 ante.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(vi) Markets for Cattle/B. RETURNS/1106. Returns of expenditure and receipts.

B. RETURNS

1106. Returns of expenditure and receipts.

The local authority maintaining a market¹ under the Animal Health Act 1981² must make such periodical returns of its expenditure and receipts in respect of the market as the appropriate Minister³ may require⁴.

1 For the meaning of 'market' generally see PARA 1001 ante.

2 As to such a local authority see PARA 1017 ante.

3 For the meaning of 'the appropriate Minister' see PARA 1046 note 3 ante.

4 Animal Health Act 1981 s 54(6). See further ANIMALS vol 2 (2008) PARA 1124.

UPDATE

1106 Returns of expenditure and receipts

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(vi) Markets for Cattle/C. PREVENTION OF DISEASES OF ANIMALS/1107. Powers to control and prohibit markets.

C. PREVENTION OF DISEASES OF ANIMALS

1107. Powers to control and prohibit markets.

Provision is made for the making of orders (1) prohibiting or regulating the holding of markets and fairs¹ and sales of animals in order to prevent the spread of diseases of animals²; (2) prohibiting or regulating the exposure of diseased or suspected animals in markets or fairs, or the placing of them in lairs or other places adjacent to or connected with markets or fairs, or where animals are commonly placed before exposure for sale³; (3) prescribing and regulating the cleansing or disinfection of places used for the holding of markets or fairs, exhibitions or sales of animals, or for lairage of animals⁴; (4) making provisions respecting animals found to be infected with pleuro-pneumonia or foot-and-mouth disease while exposed for sale or exhibited in a market or fair⁵; and (5) with regard to infected places and areas⁶. Such provision also applies to poultry⁷, and the orders may be made for the cleansing and disinfection of receptacles or vehicles used for the conveyance or exposure for sale of poultry and to protect poultry from unnecessary suffering in this regard⁸. Orders may further be made for preventing the introduction and spread of diseases of animals and poultry⁹.

1 For the meanings of 'market' and 'fair' generally see PARAS 1001-1002 ante.

2 See the Animal Health Act 1981 s 8(1)(e). As to orders made under this provision see ANIMALS vol 2 (2008) PARA 1076.

3 See *ibid* s 25(a); and ANIMALS vol 2 (2008) PARA 1077.

4 See *ibid* s 7(1)(a); and ANIMALS vol 2 (2008) PARA 1052

5 See *ibid* s 26(1)(a); and ANIMALS vol 2 (2008) PARA 1075.

6 See *ibid* s 17 (as amended), s 18; and ANIMALS vol 2 (2008) PARA 1072.

7 See *ibid* s 87(4); and ANIMALS vol 2 (2008) PARAS 1102-1104.

8 See *ibid* ss 7(1), 64(2); and ANIMALS vol 2 (2008) PARAS 1052, 1110.

9 See *ibid* s 10 (as amended); and ANIMALS vol 2 (2008) PARAS 1054, 1081, 1109.

UPDATE

1107 Powers to control and prohibit markets

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/2. THE HOLDING OF MARKETS AND FAIRS/(4) REGULATION BY STATUTE/(vi) Markets for Cattle/C. PREVENTION OF DISEASES OF ANIMALS/1108. Prohibition on markets and fairs in areas affected by foot-and-mouth disease or swine vesicular disease.

1108. Prohibition on markets and fairs in areas affected by foot-and-mouth disease or swine vesicular disease.

For the purpose of preventing the spread of foot-and-mouth disease or swine vesicular disease, where an area has been declared to be an infected area¹ or a controlled area², no person may use any premises for a fair, market³, show or other gathering of animals or collect or distribute animals for such an event, or hold a gathering of people on any premises in connection with the sale of any animal on those premises at which more than two people (other than the owner or person in charge of the animal and his or her representatives) are present, except under the authority of a licence⁴.

1 le under the Foot-and-Mouth Disease Order 1983, SI 1983/1950, art 17(1) (substituted in relation to England by SI 2001/1862; and in relation to Wales by SI 2001/1874): see ANIMALS vol 2 (2008) PARA 1074.

2 le under the Foot-and-Mouth Disease Order 1983, SI 1983/1950, art 30(1) (substituted in relation to England by SI 2001/1862; and in relation to Wales by SI 2001/1874): see ANIMALS vol 2 (2008) PARA 1074.

3 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

4 See the Foot-and-Mouth Disease Order 1983, SI 1983/1590, art 29B(1) (art 29B added in relation to England by SI 2001/1514; and in relation to Wales by SI 2001/1509; and substituted in relation to England by SI 2001/3722; and in relation to Wales by SI 2001/3706); Foot-and-Mouth Disease Order 1983, SI 1983/1590, art 30 (substituted in relation to Wales by SI 2001/2981; and in relation to England by SI 2001/2994); Swine Vesicular Disease Order 1972, SI 1972/1980, art 3, Schedule (amended by SI 1973/101; 1977/944; and SI 1993/3119). See further ANIMALS vol 2 (2008) PARAS 1066, 1072-1074.

UPDATE

1108 Prohibition on markets and fairs in areas affected by foot-and-mouth disease or swine vesicular disease

TEXT AND NOTES--SI 1983/1950 replaced: Foot-and-Mouth Disease (England) Order 2006, SI 2006/182 (amended by SI 2009/2713); Foot-and-Mouth Disease (Wales) Order 2006, SI 2006/179. There are restrictions on animal gatherings (which include gatherings at markets, fairs and shows): SI 2006/182 arts 34(1), 39(1), Sch 5 paras 14, 27, Sch 7 para 6; SI 2006/179 arts 34(1), 39(1), Sch 4 paras 14, 27, Sch 6 para 6.

NOTE 4--SI 1972/1980 (as amended) replaced, in relation to England, by the Swine Vesicular Disease Regulations 2009, SI 2009/1299, and, in relation to Wales, by the Swine Vesicular Disease (Wales) Regulations 2009, SI 2009/1372 (amended by SI 2009/1580).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/3. OCCASIONAL SALES/1109. Meaning of 'occasional sale'.

3. OCCASIONAL SALES

1109. Meaning of 'occasional sale'.

'Occasional sale' means a concourse of buyers and sellers of articles held otherwise than on a highway or in a building (except a car park) and comprising not less than five stalls, stands, vehicles (whether movable or not) or pitches from which articles are sold, but does not include¹:

- 15 (1) a market or fair² the right to hold which was acquired by virtue of a grant³,
including a presumed grant, or acquired or established by statute⁴;
- 16 (2) a sale by auction of farm livestock or deadstock⁵;
- 17 (3) sales of a class which from time to time is by resolution of the borough
council excluded from the operation of Part III of the London Local Authorities Act
1996⁶;
- 18 (4) a market held in accordance with a planning permission⁷; or
- 19 (5) a market the holding of which commenced before 1 July 1948 and has
continued without extinguishment⁸.

1 London Local Authorities Act 1996 s 10. Part III (ss 10-19) applies to a borough as from such day as may be fixed in relation to that borough by resolution of the borough council, subject to and in accordance with the provisions of s 11: s 11(1). The borough council must cause to be published in a local newspaper circulating in the borough notice of (1) the passing of any such resolution and of a day fixed by it; and (2) the general effect of the provisions of Pt III, and the day so fixed must not be earlier than the expiration of three months from the publication of the notice: s 11(2). Either a photostatic or other reproduction certified by the officer appointed for that purpose by the borough council to be a true reproduction of a page or part of a page of any such newspaper bearing the date of its publication and containing any such notice is evidence of the publication of the notice, and of the date of publication: s 11(3). 'Borough council' means London borough council and includes the Common Council of the City of London; and 'borough' and 'council' are construed accordingly: s 2. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

2 For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante.

3 As to markets and fairs acquired by grant see PARA 1004 et seq ante.

4 London Local Authorities Act 1996 s 10(a). As to markets and fairs acquired by statute see PARA 1009 et seq ante.

5 Ibid s 10(b).

6 Ibid s 10(c).

7 Ibid s 10(d). The text refers to a planning permission granted under the Town and Country Planning Act 1990 s 58(1)(b) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 236), or under a similar provision of a predecessor to that Act: London Local Authorities Act 1996 s 10(d).

8 Ibid s 10(e).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/3. OCCASIONAL SALES/1110. Licensing of occasional sales.

1110. Licensing of occasional sales.

It is unlawful for any person to hold an occasional sale¹ within a borough² unless that person is authorised to do so by a licence under Part III of the London Local Authorities Act 1996³. However, no such licence is required if the proceeds of the occasional sale are to be applied solely or principally for charitable, social, sporting, religious or political purposes⁴. A person holds an occasional sale for the purposes of Part III of the Act if:

- 20 (1) he receives or is entitled to receive payment for any space or pitch hired or let on the site of the sale to persons wishing to trade at the sale⁵; or
- 21 (2) as a person promoting the sale, or as the agent, licensee or assignee of a person promoting the sale, he receives or is entitled to receive payment from persons trading at the sale for goods sold or services rendered to persons attending the sale⁶.

1 For the meaning of 'occasional sale' see PARA 1109 ante.

2 For the meaning of 'borough' see PARA 1109 note 1 ante.

3 London Local Authorities Act 1996 s 12(1). The text refers to Pt III (ss 10-19): see PARA 1109 et seq ante.

4 Ibid s 12(2).

5 Ibid s 12(3)(a).

6 Ibid s 12(3)(b).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/3. OCCASIONAL SALES/1111. Application for licence.

1111. Application for licence.

An application for a licence for an occasional sale¹ under Part III of the London Local Authorities Act 1996² must be made in writing to the borough council³, not later than 42 days before the date on which the occasional sale is to be held⁴. This does not prevent a borough council from granting a licence, notwithstanding that application has been made at a later date if it considers it reasonable in the circumstances so to do⁵. Such an application must be in writing and must specify:

- 22 (1) the proposed date and time of commencement, expected duration and location of the intended occasional sale⁶;
- 23 (2) the extent of the premises to be occupied or used for the purposes of the sale⁷;
- 24 (3) the name and address, other than an address temporarily occupied for the purposes of the sale, of the person who proposes to hold the occasional sale, and the name and address of a person appointed to receive and answer complaints about the occasional sale⁸;
- 25 (4) an estimate of the number of persons expected to attend the occasional sale⁹;
- 26 (5) the arrangements proposed for accommodating vehicles of persons attending the occasional sale¹⁰;
- 27 (6) the arrangements proposed for controlling road congestion, litter and noise¹¹.

An applicant for the grant of a licence under Part III of the London Local Authorities Act 1996 must pay a reasonable fee determined by the borough council¹².

1 For the meaning of 'occasional sale' see PARA 1109 ante.

2 Ie the London Local Authorities Act 1996 Pt III (ss 10-19): see PARA 1109 et seq ante.

3 For the meaning of 'borough council' see PARA 1109 note 1 ante.

4 London Local Authorities Act 1996 s 13(1). As to the meaning of 'holds' in relation to an occasional sale see s 12(3); and PARA 1110 ante.

5 Ibid s 13(1) proviso.

6 Ibid s 13(2)(a).

7 Ibid s 13(2)(b).

8 Ibid s 13(2)(c). As to the display of this person's name at the place where the sale is held and on notices, etc distributed in connection with the sale see s 16; and PARA 1114 post.

9 Ibid s 13(2)(d).

10 Ibid s 13(2)(e).

11 Ibid s 13(2)(f).

12 Ibid s 13(3).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/3. OCCASIONAL SALES/1112. Grant of licence.

1112. Grant of licence.

The borough council¹ may grant a licence for an occasional sale² under Part III of the London Local Authorities Act 1996³, and in granting a licence may impose reasonable conditions⁴ relating to:

- 28 (1) the time of commencement of the occasional sale⁵;
- 29 (2) the duration of the occasional sale⁶;
- 30 (3) the arrangements to be made for accommodating the vehicles of persons attending the occasional sale⁷;
- 31 (4) the arrangements to be made for controlling road congestion, litter and noise caused by the occasional sale⁸;
- 32 (5) a requirement that the names and addresses of persons selling articles at the occasional sale are publicly displayed⁹.

If the borough council has not refused to grant a licence within 21 days of the receipt by it of an application duly made for a licence¹⁰, it will be deemed to have granted a licence for an occasional sale in accordance with the details specified in the application¹¹.

The borough council must grant an application for a such licence unless it considers that the application ought to be refused on one or more of the grounds specified in heads (a) to (c) below¹². The grounds on which a borough council may refuse an application are that:

- 33 (a) inadequate arrangements have been proposed for accommodating the vehicles of persons attending the occasional sale¹³;
- 34 (b) inadequate arrangements have been proposed for controlling road congestion, litter or noise caused by the occasional sale¹⁴; or
- 35 (c) the applicant has been granted a licence by any borough council for an occasional sale within three years before the date of the application and failed to comply with conditions imposed in relation to that licence¹⁵.

1 For the meaning of 'borough council' see PARA 1109 note 1 ante.

2 For the meaning of 'occasional sale' see PARA 1109 ante.

3 Ie the London Local Authorities Act 1996 Pt III (ss 10-19): see PARA 1109 et seq ante.

4 As to the imposition of conditions see further *ibid* s 15; and PARA 1113 post.

5 *Ibid* s 14(1)(a).

6 *Ibid* s 14(1)(b).

7 *Ibid* s 14(1)(c).

8 *Ibid* s 14(1)(d).

9 *Ibid* s 14(1)(e).

10 Ie under *ibid* s 13(1): see PARA 1111 ante.

11 *Ibid* s 14(2).

- 12 Ibid s 14(3). As to a refusal to grant a licence see further s 15; and PARA 1113 post.
- 13 Ibid s 14(4)(a).
- 14 Ibid s 14(4)(b).
- 15 Ibid s 14(4)(c).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/3. OCCASIONAL SALES/1113. Appeals against refusal to grant a licence.

1113. Appeals against refusal to grant a licence.

If the borough council¹ refuses to grant a licence for an occasional sale² under Part III of the London Local Authorities Act 1996³ it must notify the applicant in writing of its decision and of the ground or grounds for such refusal⁴, and of his rights of appeal⁵. Any person aggrieved⁶ by the refusal of a borough council to grant a licence⁷, or by a condition imposed⁸ by a borough council⁹, may appeal to a magistrates' court acting for the area in which the proposed occasional sale is to be held¹⁰. A person desiring to appeal against such refusal or condition must give a written notice to the magistrates' court and to the borough council specifying the refusal or condition against which he wishes to appeal and the grounds upon which such appeal is made¹¹. On such an appeal to the magistrates' court, the court may make such order as it thinks fit and it is the duty of the borough council to give effect to the order¹².

1 For the meaning of 'borough council' see PARA 1109 note 1 ante.

2 For the meaning of 'occasional sale' see PARA 1109 ante.

3 Ie the London Local Authorities Act 1996 Pt III (ss 10-19): see PARA 1109 et seq ante.

4 Ibid s 15(1)(a).

5 Ibid s 15(1)(b).

6 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

7 London Local Authorities Act 1996 s 15(2)(a).

8 Ie under ibid s 14(1): see PARA 1112 ante.

9 Ibid s 15(2)(b).

10 Ibid s 15(2).

11 Ibid s 15(3).

12 Ibid s 15(4).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/3. OCCASIONAL SALES/1114. Display of names, etc.

1114. Display of names, etc.

Any person who holds¹ an occasional sale² must display his full name and business address and the full name and business address of the person appointed to receive and answer complaints³ about the occasional sale in a prominent position at the place where the sale is held⁴. Any person who holds an occasional sale must also display on all notices, leaflets and posters given, distributed or exhibited by him or on his behalf in connection with the sale the full name and business address of himself⁵, and the person appointed to receive and answer complaints about the occasional sale⁶.

1 As to the meaning of 'holds' in relation to an occasional sale see the London Local Authorities Act 1996 s 12(3); and PARA 1110 ante.

2 For the meaning of 'occasional sale' see PARA 1109 ante.

3 As to the person appointed to receive complaints see the London Local Authorities Act 1996 s 13(2)(c); and PARA 1111 ante.

4 Ibid s 16(1).

5 Ibid s 16(2)(a).

6 Ibid s 16(2)(b). See note 3 supra.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/3. OCCASIONAL SALES/1115. Powers of entry.

1115. Powers of entry.

An authorised officer¹ on producing, if so required, a duly authenticated document showing his authority, or any constable², may enter and inspect any premises if he has reasonable cause to believe that they are being, have been or are intended to be, used for or in connection with an occasional sale³ for the purpose of ascertaining whether there is or has been or is intended to be a contravention of Part III of the London Local Authorities Act 1996⁴ in, or in connection with, the premises⁵.

1 'Authorised officer' (1) in relation to a borough council, means an officer authorised by the council in writing to act in relation to the relevant provision of the London Local Authorities Act 1996; (2) in relation to Transport for London, means an officer authorised by that body in writing to act in relation to the relevant provision of that Act: s 2 (definition substituted by the Transport for London (Bus Lanes) Order 2001, SI 2001/690, art 2, Schedule para 1(a)). 'Transport for London' means the body established by the Greater London Authority Act 1999 s 154 (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq): London Local Authorities Act 1996 s 2 (definition added by the Transport for London (Bus Lanes) Order 2001, SI 2001/690, art 2, Schedule para 1(a)).

2 As to the office of constable see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

3 For the meaning of 'occasional sale' see PARA 1109 ante.

4 Ie the London Local Authorities Act 1996 Pt III (ss 10-19): see PARA 1109 et seq ante.

5 Ibid s 17.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/3. OCCASIONAL SALES/1116. Enforcement.

1116. Enforcement.

Any person who contravenes the provision relating to the licensing of occasional sales¹ is guilty of an offence and liable on summary conviction to a fine². Any person who contravenes a condition imposed³ on the grant of the licence is also guilty of an offence and liable on summary conviction to a fine⁴. In addition, any person who without reasonable excuse contravenes the provision requiring the display of names⁵ is guilty of an offence and liable on summary conviction to a fine⁶.

The written consent of the Director of Public Prosecutions⁷ is needed for the laying of an information of an offence created by Part III of the London Local Authorities Act 1996⁸ by any person other than an authorised officer⁹ or a constable¹⁰.

1 Ie the London Local Authorities Act 1996 s 12 (see PARA 1110 ante). For the meaning of 'occasional sale' see PARA 1109 ante.

2 Ibid s 18(1). The fine imposed is one not exceeding level 4 on the standard scale: s 18(1). As to the standard scale see PARA 1012 note 6 ante. As to the defence of due diligence see s 29. As to the further offence of obstructing an authorised officer see s 28. As to the liability of directors, etc see s 30.

3 Ie under ibid s 14: see PARA 1112 ante.

4 Ibid s 18(2). The fine imposed is one not exceeding level 3 on the standard scale: s 18(2).

5 Ie ibid s 16: see PARA 1114 ante.

6 Ibid s 18(3). The fine imposed is one not exceeding level 2 on the standard scale: s 18(3). See note 2 *supra*.

7 As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

8 Ie the London Local Authorities Act 1996 Pt III (ss 10-19): see PARA 1109 et seq ante.

9 For the meaning of 'authorised officer' see PARA 1115 note 1 ante.

10 London Local Authorities Act 1996 s 19.

UPDATE

1116 Enforcement

NOTE 6--London Local Authorities Act 1996 s 18(3) repealed: SI 2008/1277.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/4. PEDLARS/1117. Meaning of a pedlar.

4. PEDLARS

1117. Meaning of a pedlar.

A pedlar is any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses¹, carrying to sell or exposing for sale any goods, wares or merchandise, or procuring orders for goods, wares or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft².

¹ A person travelling to a town by motor van and then trading from house to house on foot is a pedlar: *Sample v Hulme* [1956] 3 All ER 447, [1956] 1 WLR 1319.

² Pedlars Act 1871 s 3. Bartering goods for goods is 'selling' within this definition: *Druce v Gabb* (1858) 6 WR 497. However, it seems that persons who sell not in the way of trade but for charitable purposes are not pedlars and do not require pedlars' certificates: *Gregg v Smith* (1873) LR 8 QB 302. As to house to house charitable collections see CHARITIES vol 8 (2010) PARA 461 et seq. A pedlar is a person who sells on the move and not from a stall: *Watson v Malloy* [1988] 3 All ER 459, [1988] 1 WLR 1026, DC. A person who sells from a pitch from which he attracts the attention of passers-by is not a pedlar: *Stevenage Borough Council v Wright* (1996) 161 JP 13, DC (trader was stationary for at least an hour was not acting as a pedlar); cf *Tunbridge Wells Borough Council v Dunn* (1996) 95 LGR 775 (trader who was stationary for no longer than 20 minutes was acting as a pedlar). A person who sells from a unit which, despite being periodically moved backwards and forwards a few metres, remains on the same site is not a pedlar: *South Tyneside Metropolitan Borough Council v Jackson* [1998] EHLR 249, following *Westminster City Council v Elmasoglu* [1996] COD 357. As to pedlars' certificates see PARAS 1118-1122 post. Trading by a person acting as a pedlar under the authority of a pedlars certificate granted under the Pedlars Act 1871 is exempted from the provision prohibiting street trading in certain streets: see PARA 1126 post.

UPDATE

1117 Meaning of a pedlar

TEXT AND NOTES--Reference to 'mender of chairs' and 'selling or offering for sale his skill and handicraft' omitted: Pedlars Act 1871 s 3 (amended by SI 2009/2999). For transitional provision in relation to persons carrying on these activities under the authority of an unexpired pedlar's certificate (see PARA 1118) obtained before 28 December 2009 (the date on which the amendment to s 3 came into force) see Provision of Services Regulations 2009, SI 2009/2999, reg 45(2), (3).

NOTE 2--In making the distinction between a pedlar and a street trader, it is necessary to focus on the periods of time when a person is stationary, the nature of his conduct while stationary, as well as the sort of distances he covers: *Croydon LBC v Burdon* [2003] EHLR 3 (defendant moving trolley 'a few yards from time to time' during course of two hour period not acting at all material times as pedlar).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/4. PEDLARS/1118. Necessity for certificate.

1118. Necessity for certificate.

Unless he comes within certain exemptions¹, no person may lawfully act as a pedlar² without a pedlar's certificate or in any district where he is not authorised by his certificate so to act³, and he must at all times, on demand, produce and show his certificate to and allow it to be read and a copy taken by any justice of the peace or police constable or any person to whom he is offering his goods for sale or any person in whose private grounds he is found⁴. Any person who travels with, produces or shows a forged or counterfeited certificate commits an offence⁵.

1 As to where certificates are not required see PARA 1119 post.

2 For the meaning of 'pedlar' see PARA 1117 ante.

3 Pedlars Act 1871 s 4. The penalty is a sum not exceeding level 1 on the standard scale: s 4 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 1012 note 6 ante. As to the recovery of penalties see PARA 1122 post; and as to powers of arrest see note 4 infra.

4 Pedlars Act 1871 s 17. The penalty is a sum not exceeding level 1 on the standard scale: s 17 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to arrest by a constable see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 910 et seq.

5 See the Forgery and Counterfeiting Act 1981 Pt I (ss 1-13) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 346 et seq.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/4. PEDLARS/1119. Where pedlar's certificate is not required.

1119. Where pedlar's certificate is not required.

Pedlars' certificate are not required by (1) commercial travellers or other persons selling or seeking orders for goods, wares or merchandise to or from persons who are dealers in them and who buy to sell again, or who are selling or seeking orders for books as agents authorised in writing by the publishers of such books¹; (2) sellers of vegetables, fish, fruit or victuals²; or (3) persons selling or exposing for sale goods, wares or merchandise in any public mart, market or fair legally established³.

1 Pedlars Act 1871 s 23 para 1.

2 Ibid s 23 para 2. Yeast or barm is included in the term 'victuals', which includes 'everything that constitutes an ingredient in the food of man and all articles which mixed with others constitute food': *R v Hodgkinson* (1829) 10 B & C 74.

3 Pedlars Act 1871 s 23 para 3. A sale in a market de facto, held without any grant or statutory authority, is not within this exemption: *Benjamin v Andrews* (1858) 5 CBNS 299. For the meanings of 'market' and 'fair' generally see PARAS 1001-1002 ante.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/4. PEDLARS/1120. Grant of certificate.

1120. Grant of certificate.

A pedlar's certificate may be granted to any person by the chief officer of police of the police area¹ in which the applicant for a certificate has resided² during one month previous to the application, if the officer is satisfied that the applicant is above 17 years of age³, is a person of good character, and in good faith intends to carry on the trade of a pedlar⁴. A register of the certificates granted in police areas must be kept in that area, in such form and with such particulars as may be directed by the Secretary of State⁵.

On the delivery up of the old certificate or on sufficient evidence of its loss, at the expiration of the current year or during the currency of any year the chief officer of police may grant a new certificate in the same manner as upon a first application for a certificate⁶.

Upon any refusal to grant a certificate, an applicant may appeal to a magistrates' court having jurisdiction in the place where the grant was refused⁷, and a certificate granted in pursuance of an order of the court has the same effect as if it had been originally granted by the chief officer of police⁸.

Any person who makes false representations with a view to obtaining a pedlar's certificate commits an offence⁹.

1 Any act or thing authorised by the Pedlars Act 1871 to be done by the chief officer of police may be done by any police officer under his command authorised by him: s 22. As to the chief officer of police and police areas see POLICE vol 36(1) (2007 Reissue) PARAS 136-138, 178 et seq.

2 ie where he has lived: *R v St Leonard, Shoreditch, Inhabitants* (1865) LR 1 QB 21 at 23 per Cockburn CJ.

3 A person attains the age of 17 years at the commencement of his seventeenth birthday: Family Law Reform Act 1969 s 9(1).

4 Pedlars Act 1871 s 5 para 1 (amended by the Police Act 1996 s 103(1), Sch 7 para 2). The application must be in the form specified in the Pedlars Act 1871 Sch 2, or as near to it as circumstances permit (see s 5 para 2), and must be delivered at the police office of the division or sub-division of the police area in which the applicant resides (see s 9 (amended by the Police Act 1996 s 103(1), Sch 7 para 2)). Certificates, when duly signed by the chief officer of police, must be issued from that office (see the Pedlars Act 1871 s 9) after payment of a fee of £12.25 (see s 5 para 3 (amended by the Pedlar's Certificates (Variation of Fee) Order 1985, SI 1985/2027)). The certificate must be in the form specified in the Pedlars Act 1871 Sch 2: see s 5 para 4. See also *Murphy v Duke* [1985] QB 905, [1985] 2 All ER 274.

5 Pedlars Act 1871 s 8 (amended by the Pedlars Act 1881 s 2, Schedule; and the Police Act 1996 s 103(1), Sch 7 para 3)). The entries and any copy of them, certified by the chief officer of police to be a true copy, are evidence of the facts stated in them: Pedlars Act 1871 s 8. As to the Secretary of State see PARA 1023 note 3 ante.

6 Ibid s 5 para 6. The Secretary of State may provide for the expiration of all pedlars' certificates at the same time for each year and make necessary financial adjustment: see s 5 para 6.

7 See ibid s 15 (amended by the Pedlars Act 1881 s 2). The applicant must, within one week after the refusal, give to the chief officer of police, notice in writing of the appeal (see the Pedlars Act 1871 s 15 paras 1, 4) and the appeal must be heard at the sitting of the court next after the expiration of that week, but the court may, on the application of either party, adjourn the case (see s 15 para 2). The court must hear and determine the matter of the appeal and make such order, with or without costs to either party, as to the court seems just: see s 15 para 3.

8 Ibid s 15 para 5 (amended by the Pedlars Act 1881 s 2).

9 Pedlars Act 1871 s 12 (amended by the Pedlars Act 1881 Schedule; and the Forgery and Counterfeiting Act 1981 s 30, Schedule). The penalty is a term of imprisonment not exceeding six months or a fine not exceeding level 2 on the standard scale, or to both such imprisonment and fine: Pedlars Act 1871 s 12 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 1012 note 6 ante. As to the prosecution of offences see PARA 1122 post. As to offences relating to forgery see the Forgery and Counterfeiting Act 1981 Pt I (ss 1-13) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 346 et seq.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/4. PEDLARS/1121. Duration and effect of pedlar's certificate.

1121. Duration and effect of pedlar's certificate.

A pedlar's certificate remains in force for one year from the date of issue¹ and authorises the person to whom it is granted to act as a pedlar² within any part of the United Kingdom³. It may not be lent, transferred or assigned to any other person⁴. A certificate does not authorise the holder to trade in articles expressly forbidden by statute, so, for example, he may not trade in gunpowder⁵.

Nothing in the Pedlars Act 1871 removes or diminishes any of the powers vested in any local authority by any general or local Act in force in the district of such local authority⁶. However, the holder of a certificate is expressly exempt from the provisions of the Markets and Fairs Clauses Act 1847 restricting sales in the market area⁷.

Pedlars are protected from liability from street obstruction by selling in the streets in the metropolis, so long as they carry on their business in accordance with the police regulations⁸.

1 Pedlars Act 1871 s 5 para 5. However, the certificate may be forfeited: see PARA 1122 post.

2 For the meaning of 'pedlar' see PARA 1117 ante.

3 Pedlars Act 1881 s 2 (amended by the Statute Law Revision Act 1894).

4 Pedlars Act 1871 s 10. The penalty is a sum not exceeding level 1 on the standard scale, as is the penalty for borrowing or making use of another's certificate: ss 10, 11 (both amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 1012 note 6 ante. As to the recovery of penalties see PARA 1122 post.

5 See the Explosives Act 1875 ss 30, 39; and EXPLOSIVES vol 17(2) (Reissue) PARA 973. As to the powers of the police to stop and search see the Police and Criminal Evidence Act 1984 Pt I (ss 1-7) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 860 et seq.

6 Pedlars Act 1871 s 24.

7 Ibid s 6 (amended by the Pedlars Act 1881 s 2, Schedule). As to restriction of sales in markets and fairs under the Markets and Fairs Clauses Act 1847 see PARA 1058 ante.

8 See the Metropolitan Streets Act Amendment Act 1867 s 1 (as amended); *Keep v St Mary's Newington Vestry*; *Austin v St Mary's Newington Vestry* [1894] 2 QB 524, CA; *Baker v Bradley* (1910) 103 LT 253, DC. Street trading in London boroughs may also be licensed: see the London County Council (General Powers) Act 1947 Pt IV (ss 14-34) (as amended; prospectively repealed), the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended; prospectively repealed), and the London Local Authorities Act 1990 Pt III (ss 21-41) (as amended). As to street trading see PARA 1123 et seq post.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/4. PEDLARS/1122. Prosecution and forfeiture of pedlar's certificate.

1122. Prosecution and forfeiture of pedlar's certificate.

Offences may be prosecuted and penalties may be recovered before a magistrates' court¹, and the court must indorse on the certificate a record of the conviction².

Any court before which any pedlar³ is convicted of any offence under statute or otherwise may, if it thinks fit, deprive the pedlar of his certificate, and, if he is convicted of begging, the court must deprive him of his certificate⁴.

Furthermore, any magistrates' court may summon a pedlar holding a certificate to appear before it, and if he fails to appear, or on appearance fails to satisfy the court that he is in good faith carrying on the business of a pedlar, the court must deprive him of his certificate⁵.

1 See the Pedlars Act 1871 s 20. All fees received under the Pedlars Act 1871 must be applied in the manner in which penalties recoverable under that Act are applicable: see s 21. As to the application of penalties recovered in magistrates' courts see MAGISTRATES vol 29(2) (Reissue) PARAS 880-881.

2 Ibid s 14. The indorsement is evidence of the facts stated on it: s 14.

3 For the meaning of 'pedlar' see PARA 1117 ante.

4 Pedlars Act 1871 s 16.

5 Ibid s 16.

UPDATE

1122 Prosecution and forfeiture of pedlar's certificate

TEXT AND NOTES 3-5--The 1871 Act s 16 is the only power under which a pedlar may be deprived of a certificate: *R (on the application of Jones) v Chief Constable of Cheshire Police* [2005] EWHC 2457 (Admin), (2006) 170 JP 1 (chief constable of police not empowered to seize and suspend certificate).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(1) INTRODUCTION/1123. Law relating to street trading.

5. STREET TRADING

(1) INTRODUCTION

1123. Law relating to street trading.

Separate provision is made in relation to street trading in districts¹, Greater London² and the City of London³. In many districts street trading is regulated and licences are required by local enactments⁴. Further provision is made in relation to the employment of children⁵ and the control of roadside sales⁶.

1 See PARA 1126 et seq post.

2 See PARA 1130 et seq post.

3 See PARA 1160 post.

4 See eg the London County Council (General Powers) Act 1947 Pt IV (ss 14-34) (as amended; prospectively repealed) (see PARA 1130 et seq post); the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended; prospectively repealed) (see PARA 1130 et seq post); and the London Local Authorities Act 1990 Pt III (ss 21-41) (see PARA 1146 post); the Greater London Council (General Powers) Act 1978 s 10 (prospectively repealed by the London Local Authorities Act 1990 ss 24, 40, Sch 2); and the Greater London Council (General Powers) (No 2) Act 1978 s 10 (prospectively repealed by the London Local Authorities Act 1990 ss 24, 40, Sch 2). The inner London borough councils have power to provide off street accommodation for street traders: see the London County Council (General Powers) Act 1903 ss 50, 51.

5 See PARA 1124 post.

6 See PARA 1125 post.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(1) INTRODUCTION/1124. Street trading by children.

1124. Street trading by children.

No child¹ may engage or be employed² in street trading³. However, a local authority⁴ may make byelaws authorising children who have attained the age of 14 to be employed by their parents in street trading to such extent as may be specified in the byelaws, which may also regulate street trading by persons so authorised to be employed in such trading⁵.

1 For the meaning of 'child' see the Children and Young Persons Act 1933 s 30 (definition added by the Employment Act 1989 s 10, Sch 3 para 8; and amended by the Education Act 1996 s 582(1), Sch 37 para 133); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 746.

2 As to the meaning of 'employed' see the Children and Young Persons Act 1933 s 30(1); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 746.

3 Ibid s 20(1) (substituted by the Employment Act 1989 s 10, Sch 3 para 2), which is expressed to be subject to the Children and Young Persons Act 1933 s 20(2) (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 748). 'Street trading' includes hawking of newspapers, matches, flowers and other articles, playing, singing or performing for profit, shoe-blackening and other similar occupations carried on in streets or public places: s 30(1) (numbered as such by the Employment Act 1989 Sch 3 para 8).

4 For the meaning of 'local authority' see the Children and Young Persons Act 1933 ss 96, 97 (both as amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 747.

5 Ibid s 20(2) (amended by the Employment Act 1989 Sch 3 para 2). As to the byelaws that may be made see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 748.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(1) INTRODUCTION/1125. Control of roadside sales.

1125. Control of roadside sales.

A highway authority¹ may make an order², called a 'control order'³, specifying that no person may sell anything on a highway or offer or expose anything for sale on a highway⁴, and for that purpose no person may put, keep or use any stall or similar structure, or any container or vehicle on or within 15 metres of any part of the highway⁵. A control order made by a highway authority may be varied or revoked by a subsequent order⁶. A control order does not apply to certain premises and activities⁷.

Any person acting in contravention of a control order is liable to be served with a notice⁸ requiring the contravention to cease by a specified date⁹. Failure to stop the contravention by that date is an offence punishable on summary conviction by a fine¹⁰.

1 For the meaning of 'highway authority' see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq. That definition applies by virtue of the Local Government (Miscellaneous Provisions) Act 1976 s 7(3).

2 The authority must consider that it is appropriate to make the order for the purpose of avoiding danger on, or for facilitating the passage of traffic over, a specified highway: *ibid* s 7(1).

3 *Ibid* s 7(1). In the case of a control order which has been varied under s 7(2) (see the text to note 6 *infra*), 'control order' means the order as so varied: s 7(6).

4 *Ibid* s 7(1)(a). For the procedure for making control orders see the Control of Roadside Sales Orders (Procedure) Regulations 1978, SI 1978/932.

5 Local Government (Miscellaneous Provisions) Act 1976 s 7(1)(b). See also note 4 *supra*.

6 *Ibid* s 7(2).

7 Eg a control order does not apply to: (1) anything done at premises used as a shop or petrol filling station in pursuance of planning permission granted or deemed to be granted under the Town and Country Planning Act 1990, or in a case where the premises are, without such permission, lawfully used as a shop or petrol filling station (Local Government (Miscellaneous Provisions) Act 1976 s 7(5)(a) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 35(1); and the Planning and Compensation Act 1991 ss 32, 84, Sch 7 para 3, Sch 19 Pt I); (2) anything done at a market in respect of which tolls, stallages or rents are payable (Local Government (Miscellaneous Provisions) Act 1976 s 7(5)(b)); (3) the sale, offer or exposure for sale of things from or on a vehicle which is used only for the purpose of itinerant trading with the occupiers of premises or which is used only for that purpose and for purposes other than trading (s 7(5)(c)); (4) to such a vehicle as is mentioned in head (3) *supra* or to containers on the vehicle certain sales of refreshments in lay-bys on a highway (s 7(5)(d)); (5) or to containers used in connection with, the sale, offer or exposure for sale, by or on behalf of the occupier of land used for agriculture and on that land, of agricultural produce produced on that land (s 7(5)(e)); (6) to the provision, in a lay-by situated on a highway, of facilities for the purchase of refreshments by persons travelling on the highway or on another highway near to the highway (s 7(5)(f)); and (7) to anything as respects which the control order provides that the order is not to apply to it (s 7(5)(g)).

8 'Notice' means a notice in writing: *ibid* s 44(1).

9 *Ibid* s 7(4). The date must not be before the expiration of seven days beginning with the date of service of the notice: s 7(4).

10 *Ibid* s 7(4)(a). The fine must not exceed level 3 on the standard scale: s 7(4)(a) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 1012 note 6 *ante*. If a person is still in contravention of a notice issued under the Local Government (Miscellaneous Provisions) Act 1976 s 7(4), after the expiration of seven days after being convicted, he is guilty of a further offence on each day after that and is liable on summary conviction to a fine not exceeding £10 for each such day: s 7(4)(b).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(2) STREET TRADING IN DISTRICTS/1126. Adoption of street trading code and designation of streets.

(2) STREET TRADING IN DISTRICTS

1126. Adoption of street trading code and designation of streets.

A district council may resolve that the street trading code¹ is to apply to its district as from a specified day².

Where it has done so, it may by resolution³ designate any street⁴ in its district as a 'prohibited street'⁵ in which street trading⁶ is prohibited⁷, a 'licence street'⁸ in which street trading is prohibited without a licence granted by the district council⁹, or a 'consent street'¹⁰ in which street trading is prohibited without its consent¹¹.

1 le the code contained in the Local Government (Miscellaneous Provisions) Act 1982 s 3, Sch 4 (as amended; prospectively further amended). Nothing in the code affects the Markets and Fairs Clauses Act 1847 s 13 (as amended) (which prohibits sales elsewhere than in markets or in shops etc: see PARA 1058 ante), as applied by any other Act, or the Food Act 1984 s 56 (as amended) (which prohibits certain sales during market hours: see PARA 1059 ante): Local Government (Miscellaneous Provisions) Act 1982 Sch 4 para 11(a), (b) (Sch 4 para 11(b) amended by the Food Act 1984 s 134, Sch 10 para 34).

2 Local Government (Miscellaneous Provisions) Act 1982 s 3.

3 Before passing such a resolution the council must publish notice of its intention (including a draft of the resolution and a statement that written representations may be made within a specified period not being less than 28 days) in a local newspaper (ibid Sch 4 para 2(3)(a), (6)), serve a copy of the notice on the chief officer of police and any highway authority responsible for the street (Sch 4 para 2(3)(b)(i), (ii)), and obtain the necessary consent where the street is owned or maintained by a relevant corporation or maintained by a highway authority (Sch 4 para 2(3)(c), (4)(i), (ii)). 'Relevant corporation' was defined as the British Railways Board, the Commission for the New Towns, a new town development corporation, and an urban development corporation: Sch 4 para 2(5) (amended by the Local Government of Wales Act 1998 ss 129, 152, Sch 15 para 5, Sch 18 Pt IV). As to the British Railways Board, its dissolution and the transfer of its functions, etc to the Strategic Rail Authority and the Secretary of State see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 44 et seq; as to new town development corporations, the Commission for the New Towns, and urban development corporations see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARAS 1322 et seq, 1383 et seq, 1428 et seq.

The council must consider any representations duly made (Local Government (Miscellaneous Provisions) Act 1982 Sch 4 para 2(7)), and may then pass the resolution (Sch 4 para 2(8)), publishing in two consecutive weeks in a local newspaper notice of the passing of the resolution (Sch 4 para 2(9)). The first publication must give 28 days' notice of the coming into force of the resolution (Sch 4 para 2(10)), which in any event must not be before the expiration of one month from the passing of the resolution (Sch 4 para 2(2)). The resolution, or a subsequent resolution, may state that no licence will be granted to a person proposing to trade for less than a specified number of days each week: Sch 4 para 2(11), (12). Any resolution may be varied or rescinded by a subsequent resolution: Sch 4 para 2(13).

4 'Street' includes any road, footway, beach or other area to which the public has access without payment, and any service area (defined in ibid s 329 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 9)), and also any part of a street: Sch 4 para 1(1).

5 Ibid Sch 4 para 2(1)(a). See *R (on the application of Davies) v Crawley Borough Council* [2001] All ER (D) 25 (Nov) (designation of street where the claimants were trading from mobile vans as a prohibited street was not unlawful nor did it deprive them of their rights under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) First Protocol, art 1).

6 'Street trading' means the selling or exposing or offering for sale of any article (including a living thing) in a street (Local Government (Miscellaneous Provisions) Act 1982 Sch 4 para 1(1)), but does not include: (1) trading by a pedlar under a pedlar's certificate (see PARAS 1118-1122 ante); (2) anything done in a market or fair held under a grant, presumed grant or enactment (see PARA 1004 et seq ante); (3) trading in a trunk road picnic area

(see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 709); (4) trading as a news vendor selling only newspapers or periodicals from a stall or receptacle which does not (a) exceed 1 metre in length or width or 2 metres in height, (b) occupy a ground area exceeding 0.25 square metres, or (c) stand on the carriageway of a street; (5) trading at (a) a petrol filling station, or (b) premises used as a shop or in a street adjoining premises so used and as part of the business of the shop; (6) selling things or offering or exposing them for sale as a roundsman; (7) the use for trading under the Highways Act 1980 Pt VIIA (ss 115A-115K: provision of amenities) (as added and amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 573 et seq), of an object or structure placed on, in or over a highway; (8) the operation of facilities for recreation or refreshment under Pt VIIA (as added and amended); and (9) the doing of anything authorised by regulations made under the Police, Factories, etc (Miscellaneous Provisions) Act 1916 s 5 (as amended; prospectively repealed) (Local Government (Miscellaneous Provisions) Act 1982 Sch 4 para 1(2), (3)). As to pedlars see PARAS 1117-1122 ante.

As from a day to be appointed the reference in head (9) supra to regulations made under the Police, Factories, etc (Miscellaneous Provisions) Act 1916 s 5 (as amended; prospectively repealed) is to become a reference to any permit or order under the Charities Act 1992 Pt III (ss 65-74) (as amended) (see CHARITIES): Local Government (Miscellaneous Provisions) Act 1982 Sch 4 para 1(2)(j) (prospectively substituted by the Charities Act 1992 s 78(1), Sch 6 para 9). At the date at which this volume states the law no such day had been appointed.

A person who despite holding a pedlar's certificate does not act as a pedlar may not be able to avail himself of the defence: *South Tyneside Metropolitan Borough Council v Jackson* [1998] EHLR 249. For the purposes of the Local Government (Miscellaneous Provisions) Act 1982 Sch 4 para 1(2)(f), the word 'roundsman' means 'one who goes the round of his customers for orders and the delivery of goods': *Kempin (t/a British Bulldog) v Brighton and Hove Council* [2001] All ER (D) 125 (Feb), DC (operators of ice-cream van did not fall within the exemption from the definition of street trading as they did not take orders, deliver goods to customers or know what they would buy).

- 7 Local Government (Miscellaneous Provisions) Act 1982 Sch 4 para 1(1).
- 8 Ibid Sch 4 para 2(1)(b).
- 9 Ibid Sch 4 para 1(1). As to licences see PARA 1127 post.
- 10 Ibid Sch 4 para 2(1)(c).
- 11 Ibid Sch 4 para 1(1). As to consents see PARA 1128 post.

UPDATE

1126 Adoption of street trading code and designation of streets

NOTE 3--Local Government (Miscellaneous Provisions) Act 1982 Sch 4 para 2(5) further amended, Sch 4 para 2(5A) added: Housing and Regeneration Act 2008 Sch 8 para 34.

Strategic Rail Authority abolished and functions transferred: Railways Act 2005 Pt 1; SI 2006/2925.

NOTE 4--See *West Berkshire DC v Paine* [2009] EWHC 422 (Admin), [2009] LLR 381, [2009] All ER (D) 55 (Feb) (car park which public had free access could be regarded as street).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(2) STREET TRADING IN DISTRICTS/1127. Street trading licences.

1127. Street trading licences.

Application for the grant or renewal of a street trading licence under the street trading code¹ may be made by any person aged 17 or over² in writing to the district council³. The council is under a duty to grant the application unless it considers that it ought to be refused on one or more of the following grounds⁴:

- 36 (1) that there is not enough space for the applicant to trade without causing undue interference or inconvenience to street users⁵;
- 37 (2) that there are already enough traders trading in the street from shops or otherwise in the particular goods⁶;
- 38 (3) that the applicant desires to trade on fewer than the minimum number of days resolved on by the council⁷;
- 39 (4) that by reason of some conviction or otherwise he is unsuitable⁸;
- 40 (5) that he has been licensed by the council but has persistently refused or neglected to pay its fees or charges⁹;
- 41 (6) that he has been granted a street trading consent by the council but has refused or neglected to pay its fees¹⁰;
- 42 (7) that he has without reasonable excuse failed to avail himself to a reasonable extent of a previous licence¹¹.

The licence specifies the street in which, days on which and times between which, and describes the articles in which, the licence holder is permitted to trade¹², and may contain such subsidiary terms as the council thinks reasonable¹³. Unless previously revoked or surrendered, it remains valid for 12 months or such period as is specified in it¹⁴, although if the council resolves that the street be designated a prohibited street the licence ceases to be valid when the resolution takes effect¹⁵. The council may at any time revoke a licence on grounds similar to heads (1), (4), (5) and (7) above¹⁶, and the licence holder may at any time surrender his licence to the council¹⁷.

On receiving an application for the grant or renewal of a licence, the council must within a reasonable time either grant the licence as applied for¹⁸, or serve on the applicant a notice specifying, with its grounds, its proposal to refuse the application, to grant a licence on different principal terms, to grant a licence limited to a particular place in a street, to vary the principal terms or to revoke a licence, and stating that within seven days of receiving the notice the applicant may by written notice require the council to give him the opportunity of making representations¹⁹. In this case the council may not determine the matter until either the applicant has made representations, or the time for doing so has elapsed, or the applicant has failed to make the representations which he required the council to allow him to make²⁰.

A person aggrieved²¹ by certain refusals or decisions of a council²² may appeal to a magistrates' court²³, and appeal from the magistrates' decision lies to the Crown Court²⁴. The council must give effect to the court's decision²⁵.

If a licence holder applies for the renewal of a licence before it expires, the old licence remains valid until a new licence is granted or during the time for appealing or whilst an appeal is pending²⁶, and where a council decides to vary the principal terms of a licence or to revoke it, the variation or revocation does not take effect during the time for appealing or whilst an appeal is pending²⁷.

A licence holder may employ assistants without any further licence being required²⁸.

1 As to the street trading code, and as to the necessity for a licence, see PARA 1126 ante.

2 Local Government (Miscellaneous Provisions) Act 1982 s 3, Sch 4 para 3(4)(a).

3 Ibid Sch 4 para 3(1). The applicant must state his full name and address and the street in which, days on which and times between which he desires to trade, must describe the articles concerned and the stall etc, and give any other particulars required by the council (Sch 4 para 3(2)), which may also require two photographs of the applicant (Sch 4 para 3(3)).

The council may charge reasonable fees for the grant or renewal of a licence: see Sch 4 para 9(1), (2). It may require part of the fee to be paid with the application by way of returnable deposit (see Sch 4 para 9(3)), and may determine that fees be payable by instalments (Sch 4 para 9(4)). It may recover from a licence holder reasonable charges for the collection of refuse, the cleansing of streets and other services rendered: see Sch 4 para 9(6). It may determine that these charges be included in the fee, or that they be separately recoverable: Sch 4 para 9(8). Before determining or varying such charges, the council must notify licence holders and publish the proposed charges in a local newspaper (Sch 4 para 9(9)), specifying a reasonable period within which representations, which it must consider, may be made to it (Sch 4 para 9(10), (11)). A licence will not be granted for trading in a highway to which a control order (see PARA 1125 ante) is in force, other than trading to which the order does not apply: Sch 4 para 3(4)(b).

4 Ibid Sch 4 para 3(5).

5 Ibid Sch 4 para 3(6)(a). The application must not be refused on any ground in heads (1)-(3) in the text if (1) the applicant is licensed or otherwise authorised to trade in a street under any local Act; (2) the street becomes a licence street (see PARA 1126 ante); (3) he was trading from a fixed position there immediately before it became a licence street; and (4) he applied for a street trading licence to trade there: Sch 4 para 3(8)(a)-(d). If the council considers that grounds of refusal exist under any of heads (1), (2) or (3) in the text, it may grant a licence permitting trading on fewer days or during shorter periods or for more limited goods than were specified in the application: Sch 4 para 3(7).

6 Ibid Sch 4 para 3(6)(b). See also note 5 supra.

7 Ibid Sch 4 para 3(6)(c). See also note 5 supra.

8 Ibid Sch 4 para 3(6)(d).

9 Ibid Sch 4 para 3(6)(e).

10 Ibid Sch 4 para 3(6)(f). As to consents see PARA 1128 post.

11 Ibid Sch 4 para 3(6)(g). See also note 5 supra.

12 Ibid Sch 4 para 4(1)(a), (b). It may also specify a place in the street: Sch 4 para 4(2). These are known as the 'principal terms' of the licence: Sch 4 para 4(3).

13 Ibid Sch 4 para 4(4). These subsidiary terms may specify the size and type of any stall, require it to bear the holder's name and licence number and prohibit or restrict the leaving of refuse: Sch 4 para 4(5)(a)-(c).

14 Ibid Sch 4 para 4(6).

15 Ibid Sch 4 para 4(7). As to prohibited streets see PARA 1126 ante. On a licence so ceasing to be valid, or on its revocation or surrender, the council may remit the whole or any part of fees or charges under it: see Sch 4 para 9(7).

16 See ibid Sch 4 para 5(1). If it considers revoking a licence on the ground of space or the holder's failure to avail himself of the licence to a reasonable extent, it may instead vary the licence by reducing the days or period covered or limiting the goods concerned: see Sch 4 para 5(2). See also note 15 supra.

17 Ibid Sch 4 para 5(3). It then ceases to be valid: Sch 4 para 5(3). See also note 15 supra.

18 Ibid Sch 4 para 6(1)(a).

19 Ibid Sch 4 para 6(1)(b), (2). As to the principal terms see note 12 supra.

20 Ibid Sch 4 para 6(3), (4).

21 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

22 Ie (1) a refusal to grant or renew a licence on a sole ground mentioned in heads (4)-(7) in the text, or on several grounds all being grounds mentioned in those heads; (2) a decision to grant a person a licence with principal terms different from those in a licence he previously held, where its sole ground is that mentioned in head (7) in the text; or (3) a decision to vary the principal terms of a licence or revoke it on a sole ground similar to one in heads (1), (4), (5) or (7) in the text, or on several grounds all being grounds similar to those grounds (cf the text to note 16 supra): see the Local Government (Miscellaneous Provisions) Act 1982 Sch 4 para 6(5)(a)-(c).

23 Ibid Sch 4 para 6(5). The appeal must be made before the expiration of 21 days beginning with the date of notification of the refusal or decision: Sch 4 para 6(5). On the appeal the court may make such an order as it thinks fit: Sch 4 para 6(7).

24 Ibid Sch 4 para 6(6). On the appeal the court may make such order as it thinks fit: Sch 4 para 6(7).

25 Ibid Sch 4 para 6(8). However, it need not do so during the time for appealing or whilst an appeal is pending: see Sch 4 para 6(9)-(11).

26 See ibid Sch 4 para 6(10).

27 See ibid Sch 4 para 6(11).

28 See ibid Sch 4 para 8.

UPDATE

1127 Street trading licences

NOTE 5--See *R (on the application of Kelly) v Liverpool CC* [2009] EWCA Civ 191, [2009] LLR 541.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(2) STREET TRADING IN DISTRICTS/1128. Street trading consents.

1128. Street trading consents.

Application for the grant or renewal of a street trading consent under the street trading code¹ may be made by any person aged 17 or over² in writing to the district council³, which may grant the consent if it thinks fit⁴ and may attach to it such conditions as it considers reasonably necessary⁵. Unless the council includes in the consent permission for the holder to trade in a consent street from a stationary van, cart, barrow or other vehicle, or from a portable stall⁶, the holder may not do so⁷. The consent may be granted for any period not exceeding 12 months, but may be revoked at any time⁸, and the holder may at any time surrender the consent to the council⁹. He may employ an assistant without a further consent being required¹⁰.

1 As to the street trading code, and the necessity for consent, see PARA 1126 ante.

2 Local Government (Miscellaneous Provisions) Act 1982 s 3, Sch 4 para 7(3)(a).

3 Ibid Sch 4 para 7(1). The council may charge reasonable fees for the grant or renewal of a consent: see Sch 4 para 9(1), (2). It may require part of the fee to be paid with the application by way of a returnable deposit (see Sch 4 para 9(3)), and may determine that fees be payable by instalments (Sch 4 para 9(4)). The power to charge a fee relates solely to street trading and does not include general revenue raising powers: *R v Manchester City Council, ex p King* (1991) 89 LGR 696, DC.

4 Local Government (Miscellaneous Provisions) Act 1982 Sch 4 para 7(2). A consent will not be granted for trading in a highway to which a control order (see PARA 1125 ante) is in force, other than trading to which the order does not apply: Sch 4 para 7(3)(b).

5 Ibid Sch 4 para 7(4). These may include conditions to prevent obstruction or danger to street users, or nuisance or annoyance to street users or otherwise: see Sch 4 para 7(5)(a), (b). The council may at any time vary the conditions: Sch 4 para 7(6).

6 Ibid Sch 4 para 7(8). If the council includes such permission, it may make the consent subject to conditions as to where and when the licence holder may trade: see Sch 4 para 7(9). For the meaning of 'consent street' see PARA 1126 ante.

7 Ibid Sch 4 para 7(7).

8 Ibid Sch 4 para 7(10). If a consent is revoked or surrendered, the council must remit or refund, as it considers appropriate, the whole or part of any fee paid: Sch 4 para 9(5).

9 Ibid Sch 4 para 7(11). The consent then ceases to be valid: Sch 4 para 7(11). See also note 8 supra.

10 Ibid Sch 4 para 8.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(2) STREET TRADING IN DISTRICTS/1129. Offences.

1129. Offences.

A person commits an offence for which he is liable on summary conviction to a fine¹ if he:

- 43 (1) engages in street trading in a prohibited street²;
- 44 (2) engages in street trading in a licence street³ without being licensed to do so or in a consent street⁴ without consent⁵;
- 45 (3) being the holder of a consent, trades in a consent street from a stationary van, cart, barrow or other vehicle, or from a portable stall, without permission⁶;
- 46 (4) contravenes any of the principal terms of a street trading licence⁷;
- 47 (5) contravenes any condition⁸ imposed in a permission to trade from a stationary van, car, barrow or other vehicle, or from a portable stall⁹; or
- 48 (6) in connection with an application for a licence or consent makes a false statement which he knows to be false in any material respect, or which he does not believe to be true¹⁰.

It is a defence for a person charged under any of heads (1) to (5) above to prove that he took all reasonable precautions and exercised all due diligence to avoid committing the offence¹¹.

1 The fine does not exceed level 3 on the standard scale: Local Government (Miscellaneous Provisions) Act 1982 s 3, Sch 4 para 10(4) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 1012 note 6 ante.

2 Local Government (Miscellaneous Provisions) Act 1982 Sch 4 para 10(1)(a). For the meaning of 'street trading' see PARA 1126 note 6 ante; and for the meaning of 'prohibited street' see PARA 1126 ante.

3 For the meaning of 'licence street' see PARA 1126 ante.

4 For the meaning of 'consent street' see PARA 1126 ante.

5 Local Government (Miscellaneous Provisions) Act 1982 Sch 4 para 10(1)(b).

6 Ibid Sch 4 para 10(1)(d). As to such permission see Sch 4 para 7(8); and PARA 1128 ante.

7 Ibid Sch 4 para 10(1)(c). As to the principal terms see PARA 1127 note 12 ante.

8 Ie any condition imposed under ibid Sch 4 para 7(9): see PARA 1128 ante.

9 Ibid Sch 4 para 10(1)(e).

10 Ibid Sch 4 para 10(3).

11 Ibid Sch 4 para 10(2).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(i) Street Trading under the London County Council (General Powers) Acts 1947 and 1957/1130. Designation of streets.

(3) STREET TRADING IN GREATER LONDON

(i) Street Trading under the London County Council (General Powers) Acts 1947 and 1957

1130. Designation of streets.

Until the appointed day¹, the following applies in relation to street trading in Greater London. A London borough² council may from time to time by resolution designate any street³ within the borough⁴ as a street in respect of which the council will entertain applications for the grant of street trading licences⁵. Before passing such a resolution, the council must (1) consult with the Metropolitan Police Commissioner⁶; (2) post a notice in some conspicuous part of the street and publish it in a local newspaper⁷; and (3) consider any written representations made to the council before a specified date⁸ by any persons residing or trading in the street⁹.

If not less than ten persons¹⁰ residing or trading in a borough wish that any street in the borough in respect of which a designating resolution¹¹ has not been passed¹² should become a designated street¹³, they may at any time apply to the council for the passing of such a resolution in respect of that street¹⁴. As soon as reasonably practicable after the receipt of an application the council must decide whether it will or will not comply with it¹⁵, but before coming to a decision it must comply with the requirements as to posting and publishing a notice and considering representations¹⁶.

The council may also from time to time by resolution specify in relation to any designated street within the borough any class or classes of articles or things which, or other than which, the council will not prescribe in any street trading licences granted by the council in respect of that street¹⁷.

1 The London County Council (General Powers) Act 1947 Pt IV (ss 14-35) (as amended), and the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended) are repealed by the London Local Authorities Act 1990 s 24 (as amended), s 40, Sch 2 as from days to be fixed by individual borough councils in accordance with s 3 (see PARA 1146 post). As to the position after those dates see PARAS 1147 et seq post.

2 'Borough' formerly meant metropolitan borough (see the London County Council (General Powers) Act 1947 s 3(1)) for which 'London borough' is substituted by virtue of the London Government Act 1963 s 87(1) (as amended).

3 'Street' means any street, way or place or any part of a street, way or place over which the public has a right of passage: London County Council (General Powers) Act 1947 s 15(1).

4 Two London borough councils may agree that a street in one borough is deemed to be situated in the other where more convenient for the regulation of street trading: *ibid* s 15(2). 'Street trading' means the selling or exposing or offering for sale of any article or thing in a street: s 15(1). 'Article or thing' includes any living thing: s 15(1). Street traders are not pedlars, as to which see PARAS 1117-1122 ante.

5 *Ibid* s 16(1)(a). The council may rescind or vary the resolution by subsequent resolution: s 16(1). As to appeals against the rescission or variation of the resolution see PARA 1131 post. 'Street trading licence' means an annual or a temporary licence: s 15(1); see PARA 1132 et seq post.

6 *Ibid* s 16(1) proviso.

7 London County Council (General Powers) Act 1957 s 63(a)(i). The council must also give public notice of the passing of the resolution, or of a rescinding or varying resolution, by posting a notice in the street and in such other manner as it thinks desirable: London County Council (General Powers) Act 1947 s 16(2)(a).

8 The date specified must be not less than 14 days from the publication or first posting of the notice, whichever may be the later: London County Council (General Powers) Act 1957 s 63(a)(ii).

9 Ibid s 63(a)(ii), (b).

10 Where street trading licences by which the street is prescribed are in force and are less than ten in number, it is sufficient if the application is signed by all the holders of the licences: London County Council (General Powers) Act 1947 s 16(4) proviso (ii).

11 'Designating resolution' means a resolution under ibid s 16(1)(a) (see the text to notes 1-5 supra): s 15(1).

12 Where a designating resolution has been passed and rescinded there is no right to apply for a redesignation: *R v Bermondsey Borough Council, ex p Leonard* [1950] 1 All ER 1069, DC.

13 'Designated street' means a street in respect of which a resolution under the London County Council (General Powers) Act 1947 s 16(1)(a) (see the text to notes 1-5 supra) is in force: s 15(1).

14 Ibid s 16(4). As to the form of application see s 16(4) proviso (i).

15 Ibid s 16(5). If the council decides not to comply, it must post a notice in some conspicuous part of the street: s 16(5). The council is deemed to have complied if it has passed a designating resolution in certain circumstances: see s 16(7); and PARA 1131 note 7 post.

16 See the London County Council (General Powers) Act 1957 s 63; and the text and notes 7-9 supra.

17 London County Council (General Powers) Act 1947 s 16(1)(b). As to the council's powers to vary or rescind a resolution see s 16(1); and as to the requirement to give notice see s 16(2)(a); and note 7 supra.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(i) Street Trading under the London County Council (General Powers) Acts 1947 and 1957/1131. Appeal to the Secretary of State.

1131. Appeal to the Secretary of State.

Until the appointed day¹, the following applies in relation to street trading in Greater London. Any person aggrieved² by a (1) resolution of a London borough council specifying classes of articles or things³ which will or will not be prescribed in street trading licences⁴ in respect of a street⁵; (2) resolution rescinding or varying any such resolution or any designating resolution⁶; or (3) decision not to comply with an application for a designating resolution⁷, may, not later than 28 days after the passing of the resolution⁸ or after the date of posting of notice of the decision⁹, appeal to the Secretary of State¹⁰.

The Secretary of State may if he thinks fit cause a public local inquiry to be held into the subject matter of an appeal before giving his determination; and must do so where the number of appeals¹¹ is more than 20, except that he is not required to cause an inquiry to be held where it appears to him that he ought by his determination to give such directions to the council as will satisfy the appellants and the council consents to such a determination¹².

The determination of the Secretary of State is final; he may either dismiss the appeal or give such directions to the council as he thinks necessary, and the council must comply with any such directions¹³. He must give reasons for his decision if requested¹⁴.

1 The London County Council (General Powers) Act 1947 Pt IV (ss 14-35) (as amended), and the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended) are repealed by the London Local Authorities Act 1990 s 24 (as amended), s 40, Sch 2 as from days to be fixed by individual borough councils in accordance with s 3 (see PARA 1146 post). As to the position after those dates see PARA 1147 et seq post.

2 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

3 As to the meaning of 'article or thing' see PARA 1130 note 4 ante.

4 For the meaning of 'street trading licence' see PARA 1130 note 5 ante.

5 Ie a resolution made under the London County Council (General Powers) Act 1947 s 16(1)(b): see PARA 1130 ante. For the meaning of 'street' see PARA 1130 note 3 ante.

6 Ibid s 16(8). For the meaning of 'designating resolution' see PARA 1130 note 11 ante.

7 Ibid s 16(6). The council is deemed to have complied with an application if it has passed a designating resolution in respect of a street which does not differ in any material respect from the street described in the application; and any question whether the street differs in a material respect must be determined by the Secretary of State, whose determination is final: s 16(7). As to the Secretary of State see PARA 1023 note 3 ante.

8 Ie the resolution by which he is aggrieved.

9 Ie the notice required by the London County Council (General Powers) Act 1947 s 16(5): see PARA 1130 ante.

10 Ibid s 16(6), (8). A person may appeal against a decision not to comply with an application whether or not he signed the application: s 16(6). Where a designating resolution has been rescinded, the only remedy of an aggrieved person is an appeal under s 16(8). The procedure under s 16(4) (see PARA 1130 ante) applies only to streets which have never been designated: see *R v Bermondsey Borough Council, ex p Leonard* [1950] 1 All ER 1069, DC.

11 Ie appeals made to him under the London County Council (General Powers) Act 1947 s 16, and not withdrawn in respect of any one application or resolution.

12 Ibid s 16(9). By virtue of the Interpretation Act 1978 s 17(2), and the Tribunals and Inquiries (Discretionary Inquiries) Order 1975, SI 1975/1379, arts 3, 4, Schedule para 22, the Tribunals and Inquiries Act 1992 applies in relation to inquiries held under the London County Council (General Powers) Act 1947 s 16(9).

13 Ibid s 16(10).

14 See the Tribunals and Inquiries Act 1992 s 10 (as amended); Tribunals and Inquiries (Discretionary Inquiries) Order 1975, SI 1975/1379, Schedule para 22.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(i) Street Trading under the London County Council (General Powers) Acts 1947 and 1957/1132. Regulation of street trading.

1132. Regulation of street trading.

Until the appointed day¹, the following applies in relation to street trading in Greater London. Subject to certain exceptions², it is unlawful for any person to engage in street trading³ in or from a stationary position in any street⁴ within a London borough, or to engage in street trading in any designated street⁵, whether or not in or from a stationary position, unless he is authorised to do so by a street trading licence⁶. A person is deemed to engage in street trading on any occasion on which he sells or exposes or offers for sale any article or thing⁷ in a street, whether or not he regularly carries on the business of street trading⁸, but not if he merely offers to sell an article which is not in the street⁹; and he is deemed to be trading in or from a stationary position in a street if while he is engaged in street trading he or any article or thing exposed or offered for sale by him, or any receptacle¹⁰ used by him in connection with street trading, occupies a stationary position in the street¹¹.

Nothing in Part IV of the London County Council (General Powers) Act 1947¹²:

- 49 (1) restricts the right of any person to carry on the business of a pedlar¹³ in accordance with a pedlar's certificate which he holds¹⁴;
- 50 (2) applies to the sale or exposure or offer for sale of newspapers or periodicals by any person who does not use in connection with the sale any receptacle which occupies a stationary position in a street, other than a receptacle which is exclusively used in connection with the sale of certain kinds of newspapers¹⁵ and occupies a position wholly in the footway and does not exceed certain dimensions¹⁶;
- 51 (3) applies to a trader in respect of any street trading conducted by him in the course of business which he carries on with persons residing or employed in premises in or abutting on a street¹⁷, unless he permits any receptacle used by him to occupy a stationary position in the street for an unreasonable time¹⁸; or
- 52 (4) affects the sale of goods in any legal market or fair¹⁹ by any person who has paid a toll²⁰ to, or is acting under the written authority of, a person holding or entitled to hold the market or fair or to receive tolls in respect of sales made or stalls or stands occupied in it²¹.

1 The London County Council (General Powers) Act 1947 Pt IV (ss 14-35) (as amended), and the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended) are repealed by the London Local Authorities Act 1990 s 24 (as amended), s 40, Sch 2 as from days to be fixed by individual borough councils in accordance with s 3 (see PARA 1146 post). As to the position after those dates see PARA 1147 et seq post.

2 See the London County Council (General Powers) Act 1947 ss 18-20 (existing and registered traders: see PARA 1137 et seq post), s 30 (pedlars, hawkers, news-vendors etc: see the text and notes 12-18 infra), and s 33 (markets and fairs: see the text and notes 19-21 infra).

3 For the meaning of 'street trading' see PARA 1130 note 4 ante.

4 For the meaning of 'street' see PARA 1130 note 3 ante.

5 For the meaning of 'designated street' see PARA 1130 note 13 ante.

6 London County Council (General Powers) Act 1947 s 17(1). As to offences and penalties see s 29(1); and PARA 1144 post. For the meaning of 'street trading licence' see PARA 1130 note 5 ante. Nothing in Pt IV (as amended; prospectively repealed) exempts any person from or alters or affects the operation of the Road Traffic Regulation Act 1984 ss 6, 7 (both as amended) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 747 et

seq), or of any enactment relating to the obstruction of traffic in highways: London County Council (General Powers) Act 1947 ss 3(2), 31; Interpretation Act 1978 s 17(2).

7 As to the meaning of 'article or thing' see PARA 1130 note 4 ante.

8 London County Council (General Powers) Act 1947 ss 15(1), 17(1).

9 *Newman v Lipman* [1951] 1 KB 333, [1950] 2 All ER 832, DC (street photographer), not following *MacIver v Robinson* [1951] 1 KB 338n (High Court of Justiciary in Scotland). See also *Belfast Corp v Reilly* [1960] NI 171 (NI CA).

10 'Receptacle' includes a vehicle or stall and any basket, bag, box, vessel, stand, easel, board, tray or other structure or thing which is used (whether or not constructed or adapted for such use) as a container for or for the display of any article or thing: London County Council (General Powers) Act 1947 s 15(1).

11 Ibid s 17(2). As to whether under similar earlier legislation an ice-cream vendor selling from a tricycle needed a licence see *Taylor v Townend* [1938] 2 KB 198, [1938] 1 All ER 336, DC.

12 For provisions which are to be construed as if inserted in the London County Council (General Powers) Act 1947 Pt IV (as amended; prospectively repealed), see the London County Council (General Powers) Act 1957 Pt VII (as amended; prospectively repealed): s 62(3).

13 For the meaning of 'pedlar' see PARA 1117 ante.

14 London County Council (General Powers) Act 1947 s 30(a). As to pedlars' certificates see PARAS 1118-1122 ante. The section also refers to hawkers' licences, but these have been abolished.

15 Ie daily or Sunday newspapers or local newspapers circulating in any part of Greater London: ibid s 30(b)(i); London Government Act 1963 s 87(1).

16 London County Council (General Powers) Act 1947 s 30(b). The receptacle must not exceed 3 feet in height or occupy or extend over a portion of the footway measuring more than 2 feet 6 in any direction or exceeding 3 square feet in area: s 30(b)(i).

17 This includes a designated street: ibid s 30(c).

18 Ibid s 30(c). To bring himself within s 30(c), a trader must show that, before he sold goods or offered them for sale in the street, he had recognised customers there with whom he was already carrying on business as a trader: see *Islington London Borough Council v Panico* [1973] 3 All ER 485, [1973] 1 WLR 1166, DC.

19 Ie one held in pursuance of any statute, royal licence or charter or letters patent, or as of right from time immemorial: see PARA 1001 et seq ante. For the meanings of 'market' and 'fair' generally see PARAS 1001-1002 ante.

20 As to tolls see PARAS 1028-1035 ante.

21 London County Council (General Powers) Act 1947 s 33. Nor do the provisions apply to the sale by London Regional Transport of refreshments at shelters provided under the London Passenger Transport Act 1938 s 65 (as amended): see the London County Council (General Powers) Act 1957 ss 3(1), 76. As to London Regional Transport, its dissolution and the transfer of its functions, etc to Transport for London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 271 et seq. There is a specific saving in respect of markets in the area which comprised the former metropolitan borough of Woolwich and which now forms part of the London boroughs of Newham and Greenwich: see the London County Council (General Powers) Act 1947 s 32 (amended by the Local Law (Greater London Council and Inner London Boroughs) Order 1965, SI 1965/540, art 5, Sch 3); London Government Act 1963 s 1 (amended by the Local Government Act 1972 ss 8(2), 272(2), Sch 2 para 7(2), Sch 30; the Interpretation Act 1978 s 25(1), Sch 3; and the Statute Law Repeals Act 1978), London Government Act 1963 s 87(1), Sch 1 (amended by the Local Government Act 1972 Sch 30) (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 30).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(i) Street Trading under the London County Council (General Powers) Acts 1947 and 1957/1133. Annual licences.

1133. Annual licences.

Until the appointed day¹, the following provisions apply in relation to street trading in Greater London. A person requiring an annual licence² must apply in writing to the London borough council concerned stating the required particulars³, and a person requiring the renewal of an annual licence must apply not later⁴ than two nor earlier than three months before the date on which the licence will normally⁵ cease to be valid⁶. As soon as reasonably practicable after receipt of the application the council must, except as provided in the following provisions⁷, grant or renew an annual licence to the applicant⁸. The licence must be in a prescribed form⁹, and may prescribe any of the following matters: (1) the street or streets and the position or place in the street at which the licensee may trade under the authority of the licence¹⁰; (2) the classes of articles or things which he may sell (although no article of food may be classed with any commodity which is not an article of food)¹¹; (3) the days and times at or during which he may trade¹²; and (4) the nature and type and number of receptacles which he may use¹³. The council may vary such prescriptions on any occasion of renewal of the licence¹⁴.

1 The London County Council (General Powers) Act 1947 Pt IV (ss 14-35) (as amended), and the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended) are repealed by the London Local Authorities Act 1990 s 24 (as amended), s 40, Sch 2 as from days to be fixed by individual borough councils in accordance with s 3 (see PARA 1146 post). As to the position after those dates see PARA 1147 et seq post.

2 'Annual licence' means a licence under the London County Council (General Powers) Act 1947 Pt IV (as amended; prospectively repealed), other than a temporary licence (ie one valid for a single day or for a period of not more than 14 consecutive days): s 15(1). Unless it is revoked or surrendered, an annual licence is valid for one year if granted or renewed at an annual meeting fixed by the London borough council for the purpose, or, if granted or renewed at any other time, until 31 December next after the date of grant or renewal: s 21(6) (amended by the London County Council (General Powers) Act 1957 s 68(2)). It ceases to have effect on surrender: London County Council (General Powers) Act 1957 s 68(1). As to temporary licences see PARA 1135 post.

3 London County Council (General Powers) Act 1947 s 21(1) (substituted by the London County Council (General Powers) Act 1962 s 33). Any person who makes an application for the grant of an annual licence, or being a licensee at the date of the enactment of the Greater London Council (General Powers) Act 1982, makes application for the first time after that for the renewal of his annual licence, must supply two identical copies of a current full-face photograph of himself with his application: London County Council (General Powers) Act 1947 s 21(1A) (added by the Greater London Council (General Powers) Act 1982 s 6, Sch 1). The borough council must not require the display of any copy of the photograph so supplied: London County Council (General Powers) Act 1947 s 21(1A) proviso (as so added). An application must contain the following particulars: (1) the applicant's full name and address; (2) the nature of the articles or things he intends to expose for sale; (3) the place at which they will be stored when not so exposed for sale; and (4) the street or streets in which he intends to operate, and the nature and type of any receptacle he intends to use in connection with any sale or exposure or offer for sale: London County Council (General Powers) Act 1947 s 21(1)(a)-(d) (as so substituted). An applicant may specify the name of a relative who is associated with his street trading business and to whom he desires the licence to be granted in the event of his death: s 21(1) (as so substituted). The borough council must not grant a licence to the relative until 21 days after the licensee's death: s 21(2A)(a) (s 21(2A) added by the London County Council (General Powers) Act 1962 s 33; and amended by the Greater London Council (General Powers) Act 1974 s 17). Subject to the London County Council (General Powers) Act 1947 ss 21(3), 24(5), a specified relative who applies during those 21 days must be granted a licence: see s 21(2A)(b) (as so added and amended). As to the meanings of 'article or thing' and 'receptacle' see PARAS 1130 note 4, 1132 note 10 ante. For the meaning of 'street' see PARA 1130 note 3 ante; and for the meaning of 'street trading' see PARA 1130 note 4 ante.

4 If application is made later, the council may renew the licence if it considers it reasonable in the circumstances: London County Council (General Powers) Act 1957 s 67(1) proviso.

5 le unless revoked or surrendered: see PARA 1134 post.

6 London County Council (General Powers) Act 1957 s 67(1). On making the application for the grant or renewal of a licence the applicant must pay £5 to the council: London County Council (General Powers) Act 1947 s 23(1) (substituted by the London County Council (General Powers) Act 1962 s 34; and amended by the Greater London Council (General Powers) Act 1982 Sch 1).

7 le the provisions of the London County Council (General Powers) Act 1947 s 21(2A) (as added and amended) (see note 3 supra), s 21(3) (see PARA 1134 post): s 21(2) (amended by the London County Council (General Powers) Act 1962 s 33).

8 London County Council (General Powers) Act 1947 s 21(2).

9 The form is prescribed by the Secretary of State: *ibid* s 21(5). As to the Secretary of State see PARA 1023 note 3 ante.

10 See *ibid* s 21(5)(a).

11 See *ibid* s 21(5)(b).

12 See *ibid* s 21(5)(c).

13 See *ibid* s 21(5)(d). Except in certain cases, a person aggrieved by a prescription may appeal to a magistrates' court: see PARA 1140 post. When the decision is notified, the right of appeal must be notified also: see the London County Council (General Powers) Act 1958 s 37. As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) 656.

14 London County Council (General Powers) Act 1947 s 21(5).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(i) Street Trading under the London County Council (General Powers) Acts 1947 and 1957/1134. Grounds on which annual licences may be refused.

1134. Grounds on which annual licences may be refused.

Until the appointed day¹, the following applies in relation to street trading in Greater London. A London borough council may refuse to grant or renew an annual licence², or may at any time revoke or vary such a licence which it has granted if:

- 53 (1) the applicant or licensee is on account of misconduct or for any other sufficient reason in the council's opinion unsuitable to hold a licence³;
- 54 (2) the space available in the relevant streets⁴ is insufficient⁵ to permit of his engaging there in any street trading⁶, or in the particular street trading proposed or carried on, without causing undue interference with or inconvenience to traffic there⁷;
- 55 (3) the streets to which the application relates are not designated streets⁸;
- 56 (4) the prescription, in the licence applied for, of the articles or things⁹ proposed to be sold would be contrary to the terms of a resolution¹⁰ respecting articles or things to be prescribed¹¹;
- 57 (5) the applicant or licensee has persistently refused or neglected to pay charges¹² due from him to the council¹³; or
- 58 (6) the licensee has for a period of not less than four weeks not exercised or not fully exercised his rights under the licence¹⁴.

The council must not refuse to renew and must not revoke or vary the licence unless it has given the applicant or licensee not less than seven days' notice in writing and, if so required by him in writing within three days after receipt of such notice, has afforded him an opportunity of being heard¹⁵. Moreover, where an order for the prevention of interference with traffic¹⁶ is in force, no street trading licence can be granted or renewed contrary to the order; and any such licence, to the extent to which it contravenes the order, is inoperative¹⁷.

With some exceptions, there is a right of appeal to a magistrates' court against the refusal, revocation or variation of an annual licence¹⁸.

1 The London County Council (General Powers) Act 1947 Pt IV (ss 14-35) (as amended), and the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended) are repealed by the London Local Authorities Act 1990 s 24 (as amended), s 40, Sch 2 as from days to be fixed by individual borough councils in accordance with s 3 (see PARA 1146 post). As to the position after those dates see PARA 1147 et seq post.

2 For the meaning of 'annual licence' see PARA 1132 note 2 ante.

3 London County Council (General Powers) Act 1947 s 21(3)(a). The council must not refuse to grant or renew and must not revoke a licence on the ground that the applicant or licensee does not reside in the borough: s 21(3) proviso (i). A person may be considered unsuitable on the ground that he does not personally take sufficient part in conducting the business (see *Allen v Croydon Corp* [1957] Crim LR 253, CA (age and ill-health), decided under equivalent provisions in the Croydon Corporation Act 1927 s 99(2)(a) (repealed and re-enacted in the Croydon Corporation Act 1960: see ss 140-151 (repealed with savings)), or if he regularly flouts the law while trading (*Manchester Corp v Penson* [1970] 1 All ER 646, [1970] 1 WLR 204, DC, decided under equivalent provisions in the Manchester Corporation Act 1950 s 61 (repealed)). However, the mere fact that an applicant who is a nominated relative (see PARA 1133 note 3 ante) already holds an annual licence for another pitch does not render him unsuitable: see *R v Tower Hamlets London Borough Council, ex p Kayne-Levenson* [1975] QB 431, [1975] 1 All ER 641, CA.

4 le the streets to which the application relates or which are prescribed by the licence.

5 le insufficient at the date of the application or becomes so at any time after the grant of the licence. Applications must be considered in the order in which they are received: *Stepney Borough Council v Schneider* (1960) 124 JP 401, DC.

6 For the meaning of 'street trading' see PARA 1130 note 4 ante.

7 London County Council (General Powers) Act 1947 s 21(3)(b).

8 Ibid s 21(3)(c). For the meaning of 'designated street' see PARA 1130 note 13 ante.

9 As to the meaning of 'article or thing' see PARA 1130 note 4 ante.

10 le a resolution of the council specifying a class or classes of articles or things which or other than which the council will not prescribe in any street trading licences granted in respect of the street to which the application relates, where it is a designated street: see PARA 1130 ante. For the meaning of 'street trading licence' see PARA 1130 note 5 ante.

11 London County Council (General Powers) Act 1947 s 21(3)(d).

12 le any charges due under ibid Pt IV (as amended; prospectively repealed), or byelaws made under it: see PARA 1142 post.

13 Ibid s 21(3)(e).

14 Ibid s 21(3)(f).

15 Ibid s 21(3) proviso (ii). It is proper for the council before hearing the applicant to inform him of the grounds of objection against him: *R v Lewisham Corpn, ex p Jackson* (1929) 93 JP 171, DC. Since the council is an administrative body, it is not improper for it to consider a report of one of its committees before coming to a decision; nor is the decision vitiated by the presence of some members who were not present when the applicant was heard: *R v Lewisham Corpn, ex p Jackson* supra.

16 le an order under the London County Council (General Powers) Act 1947 s 24: see PARA 1141 post.

17 Ibid s 24(5); applied by s 21(2) (as amended).

18 See PARA 1140 post. When a decision is notified to a person who has this right of appeal, the council must at the same time notify him in writing of his right and of the provisions respecting the time for, and notice of, appeal: see the London County Council (General Powers) Act 1958 s 37. Putting an applicant on a waiting list is tantamount to a refusal on the ground that there is no space available (ie the ground in head (2) in the text) and in such cases the applicant should be given formal notice of refusal and told of his right to appeal: *R v Tower Hamlets London Borough Council, ex p Kayne-Levenson* [1975] QB 431, [1975] 1 All ER 641, CA. If required by the applicant or licensee, the council must deliver to him, within seven days after receipt of the requirement, particulars in writing of the grounds of refusal, revocation or variation: London County Council (General Powers) Act 1947 s 21(4). Where the council refuses to grant or renew the licence it must repay the fee paid under s 23(1) (as substituted and amended) (see PARA 1133 note 6 ante): s 23(2) (amended by the London County Council (General Powers) Act 1962 s 34).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(i) Street Trading under the London County Council (General Powers) Acts 1947 and 1957/1135. Temporary licences.

1135. Temporary licences.

Until the appointed day¹, the following applies in relation to street trading in Greater London. A London borough council² may if it thinks fit on the receipt from any person of an application for that purpose grant him a temporary licence, which is valid only on a single day or during a period of not more than 14 consecutive days³. Besides prescribing the day or period, a temporary licence may prescribe any other relevant matter which may be prescribed by an annual licence⁴.

Where the holder of an annual licence by which a position or place in a street⁵ is prescribed is not for the time being exercising his rights under the licence, a temporary licence authorising street trading⁶ in that position or place may be granted to any other person, but it must be subject to a condition that it is to cease to be valid if during its currency the holder of the annual licence desires to resume the exercise of his rights⁷.

1 The London County Council (General Powers) Act 1947 Pt IV (ss 14-35) (as amended), and the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended) are repealed by the London Local Authorities Act 1990 s 24 (as amended), s 40, Sch 2 as from days to be fixed by individual borough councils in accordance with s 3 (see PARA 1146 post). As to the position after those dates see PARA 1147 et seq post.

2 A temporary licence may be granted by any officer of the council authorised by it in that behalf: London County Council (General Powers) Act 1947 s 22(3).

3 Ibid ss 15(1), 22(1), (2). Where an order under s 24 (see PARA 1141 post) is in force no licence can be granted contrary to the order, and any licence to the extent to which it contravenes the order is inoperative: s 24(5). The applicant must pay a fee determined by the council but not exceeding a maximum fixed by byelaws; if the licence is not granted the council must repay the fee: s 23(4) (amended by the Greater London Council (General Powers) (No 2) Act 1978 s 10(1)). As to byelaws see PARA 1142 post. As to the form of the licence see London County Council (General Powers) Act 1947 s 22(2)(a). The licensee may employ other persons to assist him: see PARA 1136 post.

4 Ibid s 22(2)(b). See s 21(5); and PARA 1133 ante. For the meaning of 'annual licence' see PARA 1132 note 2 ante.

5 For the meaning of 'street' see PARA 1130 note 3 ante.

6 For the meaning of 'street trading' see PARA 1130 note 4 ante.

7 London County Council (General Powers) Act 1947 s 22(4).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(i) Street Trading under the London County Council (General Powers) Acts 1947 and 1957/1136. No licence required for employees.

1136. No licence required for employees.

Until the appointed day¹, the following applies in relation to street trading in Greater London. A person holding a street trading licence² may employ any other person to assist him in the conduct of his business without any further street trading licence being required³.

1 The London County Council (General Powers) Act 1947 Pt IV (ss 14-35) (as amended), and the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended) are repealed by the London Local Authorities Act 1990 s 24 (as amended), s 40, Sch 2 as from days to be fixed by individual borough councils in accordance with s 3 (see PARA 1146 post). As to the position after those dates see PARA 1147 et seq post.

2 For the meaning of 'street trading licence' see PARA 1130 note 5 ante.

3 London County Council (General Powers) Act 1947 s 28. However, the licence may be revoked if the holder does not personally take part in conducting the business: see PARA 1134 ante.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(i) Street Trading under the London County Council (General Powers) Acts 1947 and 1957/1137. Existing street traders and registered street traders.

1137. Existing street traders and registered street traders.

Until the appointed day¹, the following applies in relation to street trading in Greater London. Where, at any time before the date on which a street becomes a designated street², an individual has regularly engaged in street trading³ which immediately before that date could lawfully be carried on without a street trading licence⁴, he is entitled to trade in the same articles or things⁵ in that street⁶ until the expiration of two months⁷ from that date and, where he has given notice for the purpose of being registered, for a further period terminating when he is registered or 14 days from notification of a refusal to register him⁸.

Such a person⁹, on giving to the London borough council a notice in writing¹⁰ at any time during those two months¹¹ or such extended period as may be allowed by the council, is entitled to be registered by the council as a registered street trader if the following condition is substantially¹² satisfied, namely that he has for three years immediately preceding the date of his giving notice regularly engaged in street trading which has throughout that period been of the same nature and conducted in the same position or place in a street and in the same manner¹³. Even if the condition is not substantially satisfied, the council may register him¹⁴ if it considers that it would be reasonable that he should be registered¹⁵. Where a council refuses to register a person it must notify him in writing within two months of the receipt of his notice, or it will be deemed to have registered him¹⁶.

On registering any person the council must also register certain of the particulars¹⁷ specified in his notice¹⁸. A registered street trader is entitled to engage and continue to engage in street trading to the like extent and in the like manner as if he held an annual licence¹⁹ and as if the particulars thus registered²⁰ were the prescriptions of the licence²¹; but he is not authorised²² to employ any person other than a member of his family²³.

1 The London County Council (General Powers) Act 1947 Pt IV (ss 14-35) (as amended), and the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended) are repealed by the London Local Authorities Act 1990 s 24 (as amended), s 40, Sch 2 as from days to be fixed by individual borough councils in accordance with s 3 (see PARA 1146 post). As to the position after those dates see PARA 1147 et seq post.

2 For the meaning of 'designated street' see PARA 1130 note 13 ante.

3 For the meaning of 'street trading' see PARA 1130 note 4 ante.

4 For the meaning of 'street trading licence' see PARA 1130 note 5 ante.

5 As to the meaning of 'article or thing' see PARA 1130 note 4 ante.

6 For the meaning of 'street' see PARA 1130 note 3 ante.

7 Where an extended period has been allowed for the giving of notice to be registered, the individual is entitled to trade until he gives notice within that extended period: London County Council (General Powers) Act 1947 s 18(a).

8 See *ibid* ss 15(1), 18. If he is already registered he may continue to trade by virtue of s 19(6): see the text and notes 19-23 *infra*.

9 I.e. an existing street trader as defined by *ibid* s 15(1). These provisions also applied in relation to streets which are not designated streets so as to enable street traders whose trading became unlawful without a licence by virtue of s 17 (see PARA 1132 ante) to be registered. The trader normally had to give notice by 1

March 1948: see ss 15(1), 19. As to the persons who were thus entitled to be registered see further the London County Council (General Powers) Act 1927 s 30 (repealed); *Taylor v Townend* [1938] 2 KB 198, [1938] 1 All ER 336, DC (ice-cream tricycle); *Southwark Borough Council v Nightingale* (1948) 64 TLR 563, DC (perambulating barrow boy); *Dott v Holborn Borough Council* (1949) 65 TLR 99, DC (mobile barrow boy not protected).

10 The notice must specify the matters stated in the London County Council (General Powers) Act 1947 s 19(2)(a)-(g).

11 Ie next following the date on which the street becomes a designated street: *ibid* ss 15(1), 19(2).

12 The condition may be substantially satisfied even if trading has been done from a barrow etc which is ordinarily moved from place to place: *Southwark Borough Council v Nightingale* (1948) 64 TLR 563, DC.

13 London County Council (General Powers) Act 1947 s 19(1), (2). The council must register the trader unless it appears that the condition is not substantially satisfied or the council is satisfied that the particulars specified in the notice are inaccurate in some material respect: s 19(3). On registering a person the council must issue to him a certificate of registration: s 19(4)(b). See also s 19(1) proviso (effect of service with Her Majesty's forces or other circumstances due to war).

14 Ie if the council is satisfied that he is an existing street trader within the meaning of *ibid* s 15(1).

15 *Ibid* s 19(3).

16 *Ibid* s 19(5). As to the right of appeal against a refusal see PARA 1140 post. Notification of this right must be given at the same time as notice of the decision: see the London County Council (General Powers) Act 1958 s 37.

17 Ie those specifying the street and position or place of trading, the articles or things or classes of articles or things regularly sold, the days and times of trading and kind of receptacle used: London County Council (General Powers) Act 1947 s 19(2)(b)-(e), (4)(a). If it appears that these particulars do not adequately define the trader's rights the council may, with his consent, when registering them, make such modifications as may be necessary: s 19(4)(a) proviso (i). As to subsequent alterations see PARA 1138 post.

18 *Ibid* s 19(4)(a). The certificate of registration must include the registered particulars: s 19(4)(b).

19 For the meaning of 'annual licence' see PARA 1132 note 2 ante.

20 Ie registered in relation to him under the London County Council (General Powers) Act 1947 s 19(4), or those particulars as altered under the London County Council (General Powers) Act 1957 s 64 (see PARA 1138 post).

21 London County Council (General Powers) Act 1947 s 19(6); London County Council (General Powers) Act 1957 s 64(5). As to the matters that may be prescribed in an annual licence see PARA 1133 ante. Where he is registered in respect of a street which is not designated he need not reregister when the street subsequently becomes designated: London County Council (General Powers) Act 1947 s 19(6).

22 Ie by anything in *ibid* s 28: see PARA 1136 ante.

23 *Ibid* s 19(6) proviso. 'Member of the family' includes the trader's wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister and no others; but persons are deemed to be related thus notwithstanding that they are only so related through illegitimacy or in consequence of an adoption: London County Council (General Powers) Act 1957 s 66.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(i) Street Trading under the London County Council (General Powers) Acts 1947 and 1957/1138. Alteration of registered particulars.

1138. Alteration of registered particulars.

Until the appointed day¹, the following applies in relation to street trading in Greater London. Where any registered particulars have the effect of entitling the trader to engage in street trading² in two or more places or positions in any street³ or streets in a London borough, the London borough council may make such alterations⁴ as it thinks fit for reducing or limiting the number of places or positions if it considers that the reduction or limitation is necessary to reduce or eliminate interference with or inconvenience to traffic in any street⁵; but a council may not make any such alterations unless at least 14 days before doing so it has served a notice on the trader and, if so required by him in writing within seven days after the receipt of the notice, has afforded him an opportunity of being heard⁶. However, with the consent or on the application of the registered street trader, the council may at any time make such modifications in the registered particulars as it thinks fit⁷.

1 The London County Council (General Powers) Act 1947 Pt IV (ss 14-35) (as amended), and the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended) are repealed by the London Local Authorities Act 1990 s 24 (as amended), s 40, Sch 2 as from days to be fixed by individual borough councils in accordance with s 3 (see PARA 1146 post). As to the position after those dates see PARA 1147 et seq post.

2 For the meaning of 'street trading' see PARA 1130 note 4 ante; definition applied by the London County Council (General Powers) Act 1957 s 62(3).

3 For the meaning of 'street' see PARA 1130 note 3 ante; definition applied by ibid s 62(3)

4 'Alteration' includes the substitution of other particulars: ibid s 64(6).

5 Ibid s 64(1). The alterations come into force on such day as may be fixed by the council, which must not be earlier than 14 days after the trader has been notified of the alterations which have been made and the date thus fixed: s 64(3). If appeal is made to a magistrates' court, the alterations have no effect pending the final determination or abandonment of the appeal: s 64(3) proviso. The certificate of registration must be amended or a new certificate issued: see note 7 infra.

6 Ibid s 64(2). As to appeals see PARA 1140 post. When the decision is notified, the right of appeal must be notified also: see the London County Council (General Powers) Act 1958 s 37.

7 London County Council (General Powers) Act 1947 s 19(4)(a) proviso (ii). On making any modification, the council must amend the certificate of registration or issue a new certificate: s 19(4)(b).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(i) Street Trading under the London County Council (General Powers) Acts 1947 and 1957/1139. Cancellation and suspension of registration.

1139. Cancellation and suspension of registration.

Until the appointed day¹, the following applies in relation to street trading in Greater London. If in the opinion of a London borough council a street trader registered by it is on account of his having been convicted of an offence of a certain kind², or for any other sufficient reason, unsuitable to be permitted to engage in street trading³ as a registered street trader, the council may cancel his registration⁴, but must not do so unless it has given him, not less than seven days before the date proposed to be fixed for cancellation, notice in writing and, if so required by him in writing within three days of the receipt of the notice, has afforded him an opportunity of being heard⁵.

Where the council considers that a registered street trader is not for any reason (other than a bodily or mental disablement which is unlikely to be of a permanent nature) for the time being capable of substantially exercising or controlling the exercise of his rights as such a trader, the council may suspend his street trading registration⁶, but it must not do so unless it has given him not less than 14 days' notice and, if so required by him in writing within seven days after receipt of the notice, has afforded him an opportunity of being heard⁷.

On the trader's application the council may restore the registration as from such date as it fixes⁸. It must notify him of its decision as soon as may be, and if it does not so notify him within 28 days from the receipt of the application, or within such longer period as may be agreed in writing between them, the council is deemed to have refused to restore the registration⁹.

1 The London County Council (General Powers) Act 1947 Pt IV (ss 14-35) (as amended), and the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended) are repealed by the London Local Authorities Act 1990 s 24 (as amended), s 40, Sch 2 as from days to be fixed by individual borough councils in accordance with s 3 (see PARA 1146 post). As to the position after those dates see PARA 1147 et seq post.

2 I.e. an offence under the London County Council (General Powers) Act 1947 Pt IV (as amended; prospectively repealed) (see PARA 1144 post), or any offence (committed in connection with the exercise of his rights as a registered street trader) under any enactment relating to obstruction of traffic in highways. 'Enactment' in this context means any enactment whether public general or local, and includes any order or other instrument having effect by virtue of an enactment: s 3(1). Any reference in the London County Council (General Powers) Act 1947 to any enactment is to be construed as a reference to that enactment as applied extended amended or varied by or by virtue of any subsequent enactment including that Act: s 3(2).

3 For the meaning of 'street trading' see PARA 1130 note 4 ante.

4 London County Council (General Powers) Act 1947 s 20.

5 Ibid s 20 proviso (i). Cancellation is without prejudice to any subsequent application for an annual licence under s 21 (as amended) (see PARAS 1133-1134 ante): s 20 proviso (ii). As to appeals against cancellation see PARA 1140 post. When the decision is notified, the right of appeal must also be notified: see the London County Council (General Powers) Act 1958 s 37.

6 London County Council (General Powers) Act 1957 ss 62(1), 65(1). The suspension has effect from such day as may be fixed by the council which is not earlier than 14 days after the trader has been notified of the suspension and the date thus fixed, but if appeal is made to a magistrates' court the suspension has no effect pending the final determination or abandonment of the appeal: s 65(3). A registration which is suspended is of no effect for the purposes of cancellation or restoration: s 65(7).

7 Ibid s 65(2). As to the right of appeal see s 65(6); and PARA 1140 post. When the decision is notified, the right of appeal must be notified also: see the London County Council (General Powers) Act 1958 s 37.

8 London County Council (General Powers) Act 1957 s 65(4). It is an offence to procure restoration by wilful misrepresentation: see s 65(8); and PARA 1144 post.

9 Ibid s 65(5). As to the right of appeal see s 65(6); and PARA 1140 post. When the decision is notified, the right of appeal must be notified also: see the London County Council (General Powers) Act 1958 s 37.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(i) Street Trading under the London County Council (General Powers) Acts 1947 and 1957/1140. Appeals to the courts.

1140. Appeals to the courts.

Until the appointed day¹, the following applies in relation to street trading in Greater London. A person may appeal to a magistrates' court if he is aggrieved² by any of the following matters: (1) the refusal of a London borough council to register him as a registered street trader³; (2) its refusal to grant or renew an annual licence⁴, except a refusal on the ground that the street is not designated⁵ or that the articles or things⁶ to be sold are contrary to resolution⁷ or on account of an order for preventing interference with traffic⁸; (3) its cancellation of his registration; (4) its revocation or variation of an annual licence⁹; or (5) any prescription¹⁰ in an annual licence made otherwise than in pursuance of an order for preventing interference with traffic or of a resolution¹¹ respecting articles or things to be prescribed in street trading licences¹². There is, however, no appeal against the refusal of a particular pitch¹³. A registered street trader may also appeal to a magistrates' court if he is aggrieved by (a) the suspension of his registration; (b) the refusal of a council to restore his registration; (c) alterations made¹⁴ in the registered particulars; or (d) any decision of the council as to the date upon which his registration is to be suspended or restored or on which the alterations are to come into force¹⁵. In a case where an appeal thus lies to a magistrates' court a judicial review will not be granted¹⁶.

The appeal must be brought within 14 days from the date on which the decision which is the subject of the appeal was notified to the appellant¹⁷. On any such appeal the court may confirm, reverse or vary the council's decision¹⁸, and may substitute its opinion for the council's opinion¹⁹.

Any person deeming himself aggrieved²⁰ by any order of a magistrates' court under the provisions regulating street trading²¹ may appeal to the Crown Court²².

A person who was not before the magistrates' court may have a remedy by way of a quashing order as well as a person who was before the court²³.

1 The London County Council (General Powers) Act 1947 Pt IV (ss 14-35) (as amended), and the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended) are repealed by the London Local Authorities Act 1990 s 24 (as amended), s 40, Sch 2 as from days to be fixed by individual borough councils in accordance with s 3 (see PARA 1146 post). As to the position after those dates see PARA 1147 et seq post.

2 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656. See also *Ferrant v Stepney Corp'n* (1964) 108 Sol Jo 137, DC.

3 As to registration see PARA 1137 et seq ante.

4 As to annual licences see PARA 1133 ante.

5 For the meaning of 'designated street' see PARA 1130 note 13 ante.

6 As to the meaning of 'article or thing' see PARA 1130 note 4 ante.

7 Ie the grounds mentioned in the London County Council (General Powers) Act 1947 s 21(3)(c), (d): see PARA 1134 ante.

8 As to orders for preventing interference with traffic see PARA 1141 post.

9 Where the street is not a designated street, it seems that the court can consider whether it is reasonable to revoke or vary on that ground: see *Fulham Metropolitan Borough Council v Santilli* [1933] 2 KB 357, DC (now negated by the London County Council (General Powers) Act 1947 s 25(1) proviso (ii), but only in relation to refusal of a licence).

10 As to the matters that may be prescribed in an annual licence see PARA 1133 ante.

11 As to these resolutions see PARA 1130 ante.

12 London County Council (General Powers) Act 1947 s 25(1); London County Council (General Powers) Act 1957 s 62(2).

13 This is so at least where the pitch is allocated to another person (*R v Thames Magistrates' Court, ex p Greenbaum* (1957) 55 LGR 129, CA); but cf *Stepney Borough Council v Schneider* (1960) 124 JP 401, DC (cited in PARA 1134 note 5 ante), where no licence was granted.

14 Ie by a council under the London County Council (General Powers) Act 1957 s 64.

15 Ibid ss 64(4), 65(6).

16 *R v Lewisham Corpn, ex p Jackson* (1929) 93 JP 171, DC (mandamus).

17 London County Council (General Powers) Act 1947 s 25(1) proviso (i); London County Council (General Powers) Act 1957 s 73(2). The appellant must send the council written notice not less than seven days before the hearing: London County Council (General Powers) Act 1947 s 25(1) proviso (i); London County Council (General Powers) Act 1957 s 73(2).

18 London County Council (General Powers) Act 1947 s 25(1); London County Council (General Powers) Act 1957 s 73(1).

19 *Stepney Borough Council v Joffe* [1949] 1 KB 599, [1949] 1 All ER 256, DC (revocation on ground that licensee is in the council's opinion unsuitable); approved and applied in *Sagnata Investments Ltd v Norwich Corpn* [1971] 2 QB 614, [1971] 2 All ER 1441, CA.

20 See further MAGISTRATES vol 29(2) (Reissue) PARA 885.

21 Ie under any provision of the London County Council (General Powers) Act 1947 Pt IV (as amended; prospectively repealed). For provisions which are to be construed as one with Pt IV (as amended; prospectively repealed), see the London County Council (General Powers) Act 1957 Pt VII (as amended; prospectively repealed): s 62(3).

22 London County Council (General Powers) Act 1947 s 64; Courts Act 1971 s 8, Sch 1 (repealed). See MAGISTRATES vol 29(2) (Reissue) PARA 883.

23 *R v Thames Magistrates' Court, ex p Greenbaum* (1957) 55 LGR 129, CA. As to quashing orders (formerly termed orders of certiorari) see JUDICIAL REVIEW vol 61 (2010) 693 et seq. See also MAGISTRATES vol 29(2) (Reissue) PARA 884.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(i) Street Trading under the London County Council (General Powers) Acts 1947 and 1957/1141. Orders for preventing interference with traffic.

1141. Orders for preventing interference with traffic.

Until the appointed day¹, the following applies in relation to street trading in Greater London. Where it appears to the Secretary of State², after consultation with a London borough council, that undue interference with or inconvenience to traffic in any street³ within the London borough⁴ is or is likely to be caused by the presence in the street of persons to whom street trading licences⁵ have been or may thereafter be granted, he may⁶ make an order which (1) may prohibit street trading⁷ in the street by such persons except in such numbers and under such conditions as may be prescribed by the order; and (2) may⁸ prohibit the grant (otherwise than by way of renewal) of an annual licence⁹ authorising street trading in that street¹⁰. Before making the order the Secretary of State must consider any objection which is sent to him in writing within the time fixed¹¹, and where more than 20 persons affected by the proposal have duly presented objections and have not withdrawn them, or where for any other reason it appears to him that a public local inquiry should be held, he must cause an inquiry to be held¹².

Where such an order is in force, no street trading licence may be granted or renewed contrary to it, and any licence to the extent to which it contravenes the order is inoperative¹³. However, the order does not affect the operation of any licence which is in force at the date on which the order comes into force¹⁴.

1 The London County Council (General Powers) Act 1947 Pt IV (ss 14-35) (as amended), and the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended) are repealed by the London Local Authorities Act 1990 s 24 (as amended), s 40, Sch 2 as from days to be fixed by individual borough councils in accordance with s 3 (see PARA 1146 post). As to the position after those dates see PARA 1147 et seq post.

2 As to the Secretary of State see PARA 1023 note 3 ante.

3 For the meaning of 'street' see PARA 1130 note 3 ante.

4 Two London borough councils may agree that a street in one borough is to be deemed to be in the other: see PARA 1130 note 4 ante.

5 For the meaning of 'street trading licence' see PARA 1130 note 5 ante.

6 Ie subject to the London County Council (General Powers) Act 1947 s 24(3), (4): see notes 9-12 infra.

7 For the meaning of 'street trading' see PARA 1130 note 4 ante.

8 Ie either in addition to or in lieu of imposing a prohibition under head (1) in the text: see the London County Council (General Powers) Act 1947 s 24(2).

9 For the meaning of 'annual licence' see PARA 1132 note 2 ante.

10 London County Council (General Powers) Act 1947 s 24(1), (2). The Secretary of State must cause notice of the proposed order to be published in at least one newspaper circulating in the borough, and a copy must be posted for 14 days in some conspicuous part of the street: s 24(3). The notice must specify the street and the time for objecting, which must be not less than 28 days: s 24(3). An order may be revoked, without prejudice to the power to make a fresh order in respect of the same street: s 24(6).

11 The time, which must be not less than 28 days, must be stated in the notice under *ibid* s 24(3): see note 10 supra.

12 *Ibid* s 24(4). By virtue of the Interpretation Act 1978 s 17(2); and the Tribunals and Inquiries (Discretionary Inquiries) Order 1975, SI 1975/1379, arts 3, 4, Schedule para 22, the Tribunals and Inquiries Act

1992 applies in relation to inquiries held under the London County Council (General Powers) Act 1947 s 24(4). The Secretary of State must give reasons for his decision if requested: Tribunals and Inquiries Act 1992 s 10 (amended by the Pensions Act 1995 ss 122, 151, 177, Sch 3 para 21(b), Sch 5 para 16(3), Sch 7 Pt III; by virtue of the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678, art 2(1), Schedule); Tribunals and Inquiries (Discretionary Inquiries) Order 1975, SI 1975/1379, Schedule para 22.

13 London County Council (General Powers) Act 1947 s 24(5).

14 Ibid s 24(2) proviso.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(i) Street Trading under the London County Council (General Powers) Acts 1947 and 1957/1142. Byelaws.

1142. Byelaws.

Until the appointed day¹, the following applies in relation to street trading in Greater London. A London borough council may make byelaws relating to the carrying on of street trading² under the authority of a street trading licence³ or registration⁴ for regulating the following matters:

- 59 (1) the days and times when articles or things⁵ may be sold or exposed or offered for sale⁶;
- 60 (2) the storage and sanitary supervision (while at the place of intended sale or exposure) of articles or things intended to be sold⁷;
- 61 (3) the deposit and removal of refuse and the containers to be used for the deposit of such refuse pending its removal⁸;
- 62 (4) the allocation, maximum dimensions and arrangement of receptacles⁹; and
- 63 (5) any other conditions under which articles or things may be sold or exposed¹⁰.

The byelaws may provide that persons contravening the byelaws are to be liable on summary conviction to a fine¹¹; but nothing in the byelaws is deemed to make it an offence for a registered street trader¹² to engage in street trading under the authority of his registration at any time at which he would have been entitled to engage in such trading if the byelaws had not been made, or to use in connection with such street trading any receptacle which he would otherwise have been entitled so to use if the byelaws had not been made¹³.

1 The London County Council (General Powers) Act 1947 Pt IV (ss 14-35) (as amended), and the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended) are repealed by the London Local Authorities Act 1990 s 24 (as amended), s 40, Sch 2 as from days to be fixed by individual borough councils in accordance with s 3 (see PARA 1146 post). As to the position after those dates see PARA 1147 et seq post.

2 For the meaning of 'street trading' see PARA 431 ante.

3 For the meaning of 'street trading licence' see PARA 1130 note 5 ante.

4 As to street trading registration see PARA 1132 et seq ante.

5 As to the meaning of 'article or thing' see PARA 1130 note 4 ante.

6 London County Council (General Powers) Act 1957 s 72(1)(a).

7 Ibid s 72(1)(b).

8 Ibid s 72(1)(c).

9 Ibid s 72(1)(d). As to the meaning of 'receptacle' see PARA 1132 note 10 ante.

10 Ibid s 72(1)(e). As to charges to holders of street trading licences see PARA 1143 post. For the procedure for making byelaws see the Local Government Act 1972 s 236; and see LOCAL GOVERNMENT vol 69 (2009) PARA 556. The Secretary of State is the confirming authority: London County Council (General Powers) Act 1957 s 72(4). Before the byelaws are confirmed the council must take the steps prescribed in rules by the Secretary of State for affording to recognised organisations representative of street traders, and to street traders affected and not being members of any such organisation, an opportunity to make representations: s 72(5). The rules prescribed by the Secretary of State do not constitute statutory instruments. Byelaws made under the London County Council (General Powers) Act 1927 Pt VI (repealed), have effect as if made under the present provisions by virtue of the London County Council (General Powers) Act 1947 s 34(1), and byelaws made under s 27 (repealed) continue to have effect by virtue of the London County Council (General Powers) Act 1957 s 72(6).

11 Local Government Act 1972. The fine imposed is one not exceeding level 2 on the standard scale, and, in the case of a continuing offence, there is a further fine not exceeding £5 for each day during which the offence continues after conviction: s 237 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 1012 note 6 ante.

12 As to registered street traders see PARA 1137 ante.

13 London County Council (General Powers) Act 1957 s 72(3).

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1143. Charges.

Until the appointed day¹, the following applies in relation to street trading in Greater London. A London borough council may make and recover from holders of street trading licences² (other than temporary licences³) granted by it such charges as may be sufficient in the aggregate taking one year with another to cover the reasonable costs of the removal of refuse or other services⁴ rendered by the council to those holders, the cleansing of streets⁵ in which street trading⁶ takes place, and the expenses incurred by the council in the administration of the statutory provisions⁷ as to street trading⁸.

A council may sell, let or hire to an authorised street trader⁹ containers for the deposit of refuse arising in the course of the street trading in which he is authorised to engage¹⁰.

1 The London County Council (General Powers) Act 1947 Pt IV (ss 14-35) (as amended), and the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended) are repealed by the London Local Authorities Act 1990 s 24 (as amended), s 40, Sch 2 as from days to be fixed by individual borough councils in accordance with s 3 (see PARA 1146 post). As to the position after those dates see PARA 1147 et seq post.

2 For the meaning of 'street trading licence' see PARA 1130 note 5 ante.

3 As to temporary licences see PARA 1135 ante.

4 'Other services' is construed ejusdem generis with the removal of refuse: *Westminster Corpn v Armstrong* [1929] 2 KB 451, DC.

5 For the meaning of 'street' see PARA 1130 note 3 ante.

6 For the meaning of 'street trading' see PARA 1130 note 4 ante.

7 I.e. the provisions of the London County Council (General Powers) Act 1947 Pt IV (as amended; prospectively repealed), or of any enactment extending or amending Pt IV (as amended; prospectively repealed).

8 Ibid s 26 (substituted by the Greater London Council (General Powers) Act 1978 s 10(1)(b), (2), Sch 1 Pt II).

9 'Authorised street trader' means a registered street trader or a person holding a street trading licence: London County Council (General Powers) Act 1957 s 62(1). As to registered street traders see PARA 1137 ante.

10 Ibid s 71.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(i) Street Trading under the London County Council (General Powers) Acts 1947 and 1957/1144. Offences.

1144. Offences.

Until the appointed day¹, the following applies in relation to street trading in Greater London. Every person² who, or whose assistant, without the authority of a street trading licence³ or contrary to any prescription⁴ of a street trading licence, either (1) engages in street trading, in or from a stationary position⁵, in any street within a London borough⁶; or (2) engages in street trading in any designated street whether or not in or from a stationary position⁷, is guilty of an offence⁸.

Any person who by wilful misrepresentation obtains a street trading licence or the renewal of any such licence, or procures himself to be registered as a registered street trader⁹, or procures the restoration of his registration as such, is also guilty of an offence¹⁰.

Any person¹¹ found engaging in street trading in or from a stationary position in a street within a London borough, or engaging in street trading in a designated street, must, on being required to do so by an officer of the London borough council¹² or by an officer of the Metropolitan Police, furnish to him his name and address, and in default of compliance he is guilty of an offence¹³. Similarly, on being so required, he must produce the licence or the certificate of registration under the authority of which he is engaging in such street trading or be guilty of an offence¹⁴.

Every person found guilty of any such offence is liable on summary conviction to a fine¹⁵.

1 The London County Council (General Powers) Act 1947 Pt IV (ss 14-35) (as amended), and the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended) are repealed by the London Local Authorities Act 1990 s 24 (as amended), s 40, Sch 2 as from days to be fixed by individual borough councils in accordance with s 3 (see PARA 1146 post). As to the position after those dates see PARA 1147 et seq post.

2 This includes a person who sells, exposes or offers for sale any article or thing on or from land within 20 feet of any street or designated street and who is not (1) the owner of that land; (2) the occupier of that land and liable to be assessed to rates in respect of it; or (3) on the land with the written consent of the owner or occupier; and in proceedings against such street traders, the person prosecuted has the burden of proving that, at the relevant time, he falls within one of those heads: London County Council (General Powers) Act 1947 s 29(4)(a), (b) (added by the Greater London Council (General Powers) Act 1974 s 18). For the meaning of 'street' see PARA 1130 note 3 ante; and for the meaning of 'designated street' see PARA 1130 note 13 ante.

3 For the meaning of 'street trading licence' see PARA 1130 note 5 ante. Under earlier repealed enactments there was no power to grant a licence valid for less than a year, but certain borough councils made a practice of issuing day licences; and a person prosecuted for street trading without a licence could not be convicted even though there was no power to issue the licence required: see *Baars v Keep* (1931) 95 JP 153, DC (Sunday trading); cf *Dennis v Willmore* [1936] 2 All ER 407, DC (conviction although prosecution was in support of unauthorised system of licences). While an appeal is pending against a refusal to renew or a revocation or variation of an annual licence, the licence is deemed for this purpose to have been renewed or not to have been revoked or varied or to have been renewed without any variation of the prescriptions of it: London County Council (General Powers) Act 1947 s 29(1) proviso (ii). Where, during the validity of an annual licence which is not subsequently revoked, an application or appeal is made under s 16 (see PARA 1131 ante) with respect to a street prescribed by the licence, the holder is in the same position in respect of anything done by him in the street as if the licence continued in force until the question was finally disposed of: see s 29(1) proviso (iv). While an appeal is pending against a refusal to register or a refusal of an annual licence applied for in consequence of that refusal, or against the cancellation of a registration, the appellant is in the same position as if his registration had not been refused or cancelled: see s 29(1) proviso (iii). For the meaning of 'annual licence' see PARA 1132 note 2 ante.

4 As to the matters that may be prescribed in a licence see PARA 1133 ante. Particulars registered under ibid s 19(4) (see PARA 1137 ante) are deemed to be the prescriptions of a street trading licence: s 29(1) proviso (i). While an appeal is pending against any prescription of a renewed annual licence, the licence is deemed for this purpose to have been renewed without any variation of the prescriptions: s 29(1) proviso (ii).

5 For the meanings of 'street trading' see PARA 1130 note 4 ante.

6 London County Council (General Powers) Act 1947 s 29(1)(a).

7 Ibid s 29(1)(b).

8 Ibid s 29(1).

9 As to registered street traders see PARA 1137 ante.

10 London County Council (General Powers) Act 1947 s 29(2); London County Council (General Powers) Act 1957 s 65(8).

11 This includes the persons mentioned in note 2 supra, who are subject to the burden of proof there mentioned: London County Council (General Powers) Act 1947 s 29(4)(a) (amended by the Greater London Council (General Powers) Act 1974 s 18).

12 Ie an officer of the council, duly authorised in writing, and (if so required) producing his authority: London County Council (General Powers) Act 1947 s 29(3).

13 Ibid s 29(3).

14 London County Council (General Powers) Act 1957 s 70.

15 Greater London Council (General Powers) Act 1981 s 17. The fine must not exceed level 3 on the standard scale: s 17 (amended by virtue of the Criminal Justice Act 1982 ss 37, 46); Greater London Council (General Powers) Act 1981 Sch 1. As to the standard scale see PARA 1012 note 6 ante. As to the penalty under byelaws see PARA 1142 ante.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(i) Street Trading under the London County Council (General Powers) Acts 1947 and 1957/1145. Evidence in proceedings for offences.

1145. Evidence in proceedings for offences.

Until the appointed day¹, the following applies in relation to street trading in Greater London. In any proceedings for a street trading offence under the relevant provisions of the London County Council (General Powers) Act 1947 or the London County Council (General Powers) Act 1957² (otherwise than that for a contravention of any prescriptions of a street trading licence³ or any particulars registered in relation to a street trader⁴ specifying the days or times for trading), where it is shown that any article or thing⁵ was displayed in or on any receptacle⁶ in a stationary position in any street⁷ or on land within 20 feet of any street or designated street⁸, that article or thing is presumed to have been exposed or offered for sale by the person in charge or appearing to be in charge of it, unless it is shown to the satisfaction of the court that the article or thing was brought into that street for some purpose other than selling it or exposing it or offering it for sale in a street⁹.

1 The London County Council (General Powers) Act 1947 Pt IV (ss 14-35) (as amended), and the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended) are repealed by the London Local Authorities Act 1990 s 24 (as amended), s 40, Sch 2 as from days to be fixed by individual borough councils in accordance with s 3 (see PARA 1146 post). As to the position after those dates see PARA 1147 et seq post.

2 I.e. the London County Council (General Powers) Act 1947 s 29 (as amended), or the London County Council (General Powers) Act 1957 Pt VII (as amended; prospectively repealed): see PARA 1144 ante. For the meaning of 'street trading' see PARA 1130 note 4 ante; definition applied by s 62(3).

3 As to the matters that may be prescribed in a licence see PARA 1133 ante. For the meaning of 'street trading licence' see PARA 1130 note 5 ante; definition applied by ibid s 62(3).

4 As to the particulars that must be registered see the London County Council (General Powers) Act 1947 s 19(4); and PARA 1137 ante.

5 As to the meaning of 'article or thing' see PARA 1130 note 4 ante; definition applied by the London County Council (General Powers) Act 1957 s 62(3).

6 As to the meaning of 'receptacle' see PARA 1132 note 10 ante; definition applied by ibid s 62(3).

7 For the meaning of 'street' see PARA 1130 note 3 ante; definition applied by ibid s 62(3).

8 Greater London Council (General Powers) Act 1947 s 19(1). For the meaning of 'designated street' see PARA 1130 note 13 ante; definition applied by s 19(2).

9 London County Council (General Powers) Act 1957 s 74.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(ii) Street Trading under the London Local Authorities Act 1990/1146. Application of Part III of the London Local Authorities Act 1990.

(ii) Street Trading under the London Local Authorities Act 1990

1146. Application of Part III of the London Local Authorities Act 1990.

Part III of the London Local Authorities Act 1990¹ applies to the borough of a participating council² as from the appointed day for that council³. 'The appointed day' means such day as may be fixed in relation to the borough of a participating council by resolution of the borough council⁴. Different days may be fixed for the purpose of the application of different provisions of the London Local Authorities Act 1990 to a borough⁵. The borough council must cause to be published in a local newspaper circulating in the borough notice of the passing of any such resolution and of the day fixed by it, and of the general effect of the provisions of the London Local Authorities Act 1990 coming into operation as from that day, and the day so fixed must not be earlier than the expiration of three months from the publication of the notice⁶.

1 The London Local Authorities Act 1990 Pt III (ss 21-41) (as amended): see PARAS 1147 et seq post. Part III has been amended by the London Local Authorities Act 1994 s 6, and is reproduced in full in its amended form in the Schedule to that Act.

2 'Participating council' means any of the following borough councils: Barking and Dagenham Borough Council, Barnet Borough Council, Bexley Borough Council, Brent Borough Council, Bromley Borough Council, Camden Borough Council, Croydon Borough Council, Ealing Borough Council, Enfield Borough Council, Greenwich Borough Council, Hackney Borough Council, Hammersmith and Fulham Borough Council, Haringey Borough Council, Harrow Borough Council, Havering Borough Council, Hillingdon Borough Council, Hounslow Borough Council, Islington Borough Council, Kensington and Chelsea Royal Borough Council, Kingston upon Thames Royal Borough Council, Lambeth Borough Council, Lewisham Borough Council, Merton Borough Council, Newham Borough Council, Redbridge Borough Council, Richmond upon Thames Borough Council, Southwark Borough Council, Sutton Borough Council, Tower Hamlets Borough Council, Waltham Forest Borough Council, Wandsworth Borough Council, Westminster City Council: London Local Authorities Act 1990 s 2, Sch 1 (amended by the London Local Authorities Act 1994 s 9). 'Borough council' means London borough council but does not include the Common Council of the City of London; and 'borough' is construed accordingly: London Local Authorities Act 1990 s 2. As to the London Borough Councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 30 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq.

3 Ibid s 22. As from the appointed day when the London Local Authorities Act 1990 Pt III (as amended) is adopted by a participating council, the provisions relating to street trading in the local enactment which formerly applied to that council cease to have effect. The relevant enactments are those listed in Sch 2 column (2), and so far as they relate to any part of Greater London, cease to have effect in a borough as from the appointed day for that borough to the extent specified in column (3): s 40(1). Notwithstanding the repeal of the enactments specified Sch 2 column (2), any licence granted by a borough council under any of those enactments which authorises street trading in the borough and which was in force immediately before the appointed day continues in force until three months after the appointed day or until the determination of any application made by the holder of the licence under s 25 (application for street trading licences) (see PARA 1149 post), whichever is the later: s 40(2). For the meaning of 'street trading' see PARA 1147 post.

4 Ibid s 3(1).

5 Ibid s 3(2).

6 Ibid s 3(3). Either a photostatic or other reproduction certified by the officer appointed for that purpose by the borough council to be a true reproduction of a page or part of a page of any such newspaper bearing the date of its publication and containing any such notice is evidence of the publication of the notice, and of the date of publication: s 3(4).

UPDATE

1146 Application of Part III of the London Local Authorities Act 1990

TEXT AND NOTES--The 1990 Act Pt 3, as amended by the London Local Authorities Act 1994, the London Local Authorities Act 2004 and the London Local Authorities Act 2007, is set out in the 2007 Act Sch 3 (Keeling Schedule): s 49.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(ii) Street Trading under the London Local Authorities Act 1990/1147. Licensing of street traders.

1147. Licensing of street traders.

'Street trading' means the selling or exposing or the offering for sale of any article, including a living thing, or the supplying or offering to supply any service in a street for gain or reward¹. It is unlawful for any person to engage in street trading, whether or not in or from a stationary position in any licence street² within a borough unless that person is authorised to do so by a street trading licence³ or a temporary licence⁴.

A person holding a street trading licence may employ any other person to assist him in the conduct of street trading authorised by the licence⁵. However, if any person employed by a licence holder during the temporary absence of the licence holder fails to comply with the conditions of the street trading licence held by his employer, such failure is deemed to be a failure by the licence holder⁶.

1 London Local Authorities Act 1990 s 21(1). The following activities are not street trading for the purposes of Pt III (ss 21-41) (as amended) (see PARA 1148 et seq post):

- 1 (1) trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871 (London Local Authorities Act 1990 s 21(2)(a));
- 2 (2) anything done in a market or fair the right to hold which was acquired by virtue of a grant, including a presumed grant, or acquired or established by virtue of any enactment or order (s 21(2)(b));
- 3 (3) trading in a trunk road picnic area provided by the Secretary of State under the Highways Act 1980 s 112 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 709) (London Local Authorities Act 1990 s 21(2)(c));
- 4 (4) trading as a news-vendor provided that the only articles sold or exposed or offered for sale are newspapers or periodicals and they are sold or exposed or offered for sale without a receptacle for them or, if with a receptacle for them such receptacle does not (a) exceed 1 metre in length or width or 2 metres in height; or (b) occupy a ground area exceeding 0.25 square metre; or (c) stand on the carriageway of a street; or (d) cause undue interference or inconvenience to persons using the street (s 21(2)(d));
- 5 (5) selling articles or things to occupiers of premises adjoining any street, or offering or exposing them for sale from a vehicle which is used only for the regular delivery of milk or other perishable goods to those persons (s 21(2)(e));
- 6 (6) the use for trading under the Highways Act 1980 Pt VIIA (ss 115A-115K) (as added and amended) (provision of amenities) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 573 et seq) of any object or structure placed on, in or over a highway (London Local Authorities Act 1990 s 21(2)(f));
- 7 (7) the operation of facilities for recreation or refreshment under the Highways Act 1980 Pt VIIA (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 575 et seq) (London Local Authorities Act 1990 s 21(2)(g));
- 8 (8) the doing of anything authorised by regulations made under the Police, Factories, etc (Miscellaneous Provisions) Act 1916 s 5 (as amended; prospectively repealed) (London Local Authorities Act 1990 s 21(2)(h));
- 9 (9) trading in a highway in relation to which a control order under the Local Government (Miscellaneous Provisions) Act 1976 s 7 (as amended) (see PARA 1125 ante) is in force, other than trading to which the control order does not apply (London Local Authorities Act 1990 s 21(2)(i)); and

- 10 (10) the sale, exposure or offer for sale of articles or offer or provision of services on any land comprised in a street (not being part of a highway) by the owner or occupier of the land or by a bona fide employee of the owner or occupier of the land (s 21(2)(j) (amended by the London Local Authorities Act 1994 s 6(1))).

'Receptacle' includes a vehicle or stall and any basket, bag, box, vessel, stand, easel, board, tray or thing which is used, whether or not constructed or adapted for such use, as a container for or for the display of any article or thing or equipment used in the provision of any service: s 21(1). As to pedlars see PARAS 1117-1124 ante; and as to pedlar's certificates see PARA 1118 et seq ante. For the meanings of 'market' and 'fair' see PARAS 1001-1002 ante. As to franchise see PARAS 1001-1003 ante.

Trading from a kiosk is not street trading as the reference to the Highways Act 1980 Pt VIIA (as added and amended) in the London Local Authorities Act 1990 s 21(2)(f) (see head (6) supra) makes it clear that trading within a permanent structure was not intended to be included within the definition of street trading: *Tower Hamlets London Borough Council v Sherwood* (2002) Times, 4 March, CA.

For the purposes of the London Local Authorities Act 1990 Pt III (as amended), a person is deemed to engage in street trading whether or not he regularly carries on the business of street trading: s 23(2).

As from a day to be appointed the reference in head (8) supra to regulations made under the Police, Factories, etc (Miscellaneous Provisions) Act 1916 s 5 (as amended; prospectively repealed) is replaced with a reference to any permit or order under the Charities Act 1992 Pt III (ss 65-74) (as amended) (see CHARITIES); London Local Authorities Act 1990 s 21(2)(h) (prospectively substituted by the London Local Authorities Act 1996 s 26). At the date at which this volume states the law no such day had been appointed.

Nothing in the London Local Authorities Act 1990 Pt III (as amended) (i) affects the Markets and Fairs Clauses Act 1847 s 13 (as amended) (prohibition of sales elsewhere than in a market or in shops etc) (see PARA 1058 ante) as applied by any other Acts; (ii) affects the Food Act 1984 s 56 (as amended) (prohibition of certain sales during market hours) (see PARA 1060 ante); (iii) affects the sale or exposure or offer for sale by London Regional Transport or, as the case may be, a designated company (within the meaning of the Transport (London) Act 1969) of refreshments at any shelter or other accommodation provided by either of them under the London Passenger Transport Act 1938 s 65 (as amended) (refreshment shelters, etc) (London Local Authorities Act 1990 s 39(1)); or (iv) affords a defence to a charge in respect of any offence at common law or under an enactment other than Pt III (as amended): s 39(2). As to London Regional Transport, its dissolution and the transfer of its functions, etc to Transport for London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 271 et seq. In the case of any market or fair held in pursuance of any statute, royal licence, royal charter or letters patent, or as of right from time immemorial, nothing in Pt III (as amended) affects the sale or exposure or offer for sale of goods in any such market or fair by any person who has paid a toll to, or is acting under the written authority of, a person holding or entitled to hold such market or fair or entitled to receive tolls in respect of sales made or stalls or stands occupied in such market or fair: s 41. As to tolls see PARAS 1028-1035 ante.

- 2 'Licence street' means a street designated under ibid s 24 (as amended) (see PARA 1148 post): s 21(1).

- 3 'Street trading licence' means a licence granted under ibid Pt III (as amended) (see PARA 1148 et seq post) and valid for the period specified therein being not less than six months and not more than three years: s 21(1).

- 4 Ibid s 23(1), which is expressed to be subject to the provisions of Pt III (as amended) (see PARA 1148 et seq post). Part III (as amended) applies to the borough of a participating council as from the appointed day for that borough: s 22. For the meaning of 'borough council' see PARA 1146 note 2 ante. 'Participating council' means any of the borough councils mentioned in Sch 1 (see PARA 1146 note 2 ante): s 2. As to the appointed day see PARA 1146 ante. For the meaning of 'temporary licence' see PARA 1154 note 3 post.

- 5 Ibid s 36.

- 6 Ibid s 36.

UPDATE

1147 Licensing of street traders

TEXT AND NOTE 1--After 'gain or reward' add '(whether or not the gain or reward accrues to the person actually carrying out the trading)': 1990 Act s 21(1) (definition amended by London Local Authorities Act 2007 s 38(4)). In determining whether activity amounts to street trading for the purposes of the 1990 Act, the fact that (1) a transaction was completed elsewhere than in a street in the case where the initial offer or display of the articles in question or the offer of services, as the case may be, took

place in a street; (2) either party to the transaction was not in a street at the time it was completed; (3) the articles actually sold or services actually supplied, as the case may be, were different from those offered, must be disregarded: s 21(1A) (added by 2007 Act s 38(5)).

NOTE 1--Heads (6), (7) omitted: 2007 Act s 38(6).

London Local Authorities Act 1990 s 39(1) amended: Transport for London (Consequential Provisions) Order 2003, SI 2003/1615.

TEXT AND NOTES 5, 6--1990 Act s 36 amended to include a person holding a temporary licence: 2007 Act s 43.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(ii) Street Trading under the London Local Authorities Act 1990/1148. Designation of licence streets.

1148. Designation of licence streets.

If a borough council¹ considers that street trading² should be licensed in its area, it may from time to time pass a resolution (a 'designating resolution') designating any street³ within the borough as a licence street⁴, or pass a resolution specifying in relation to any such street or any part of a street any class or classes of articles, things or services which it will, or other than which it will not, prescribe in any street trading licence⁵ granted by it in respect of that street⁶. The council may from time to time by subsequent resolution rescind or vary any such resolution⁷. Before passing a designating resolution, a borough council must consult with the Metropolitan Police Commissioner on its proposal, and before rescinding or varying a designating resolution, consult with the licence holders trading in the street in question, or a body or bodies representative of them, on its proposal⁸.

The streets prescribed by any licences granted by the council of the borough in pursuance of certain powers⁹ and then in force are deemed to have been designated as licence streets under a designating resolution¹⁰. If a borough council passes a designating resolution the designation of the street takes effect on the day specified in the resolution, which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed¹¹.

The borough council must publish notice of the passing of such a resolution in a local newspaper circulating in its area on two consecutive weeks¹². The first publication must not be later than 28 days before the day specified in the resolution for the coming into force of the designation¹³.

1 For the meaning of 'borough council' see PARA 1146 note 2 ante.

2 For the meaning of 'street trading' see PARA 1147 ante.

3 'Street' includes: (1) any road or footway; (2) any other area, not being within permanently enclosed premises, within 7 metres of any road or footway, to which the public have access without payment; (3) any part of such road, footway or area; and (4) any part of any housing development provided or maintained by a local authority under the Housing Act 1985 Pt II (ss 8-57) (as amended) (see HOUSING vol 22 (2006 Reissue) PARA 303 et seq); London Local Authorities Act 1990 s 21(1).

4 Ibid s 24(1)(a). For the meaning of 'licence street' see PARA 1147 note 2 ante.

A borough council must not pass a resolution to rescind or vary a resolution under s 24 (as amended) unless: (1) it has published notice of its intention to do so in a local newspaper circulating in its area; (2) it has served a copy of the notice on the highway authority for that street (unless it is that highway authority); and (3) where (a) the resolution relates to a street which is owned or maintainable by a relevant corporation; and (b) where the resolution designates as a licence street any street maintained by a highway authority, it has obtained the necessary consent: s 24(4), (5)(a), (b). Such a notice must contain a draft of the resolution to which it relates, and state that representations relating to it may be made in writing to the borough council within such period, not less than 28 days after the publication of the notice, as may be specified in the notice: s 24(7). As soon as practicable after the expiry of that period, the borough council must consider any representations relating to the proposed resolution which it has received before the expiry of that period: s 24(8). After the borough council has considered those representations, it may if it thinks fit, pass such a resolution relating to the street as is mentioned in s 24(1): s 24(9). For these purposes, 'necessary consent' means in the case mentioned in head (3) (a) supra, the consent of the relevant corporation, and in the case mentioned in head (3)(b) supra, the consent of the highway authority (s 24(5)(i), (ii)); and 'relevant corporation' was defined as the British Railways Board, London Regional Transport, and an urban development corporation established under the Local Government, Planning and Land Act 1980: London Local Authorities Act 1990 24(6). As to the British Railways Board, its dissolution and the transfer of its functions, etc to the Strategic Rail Authority and the Secretary of State see

RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 44 et seq. As to London Regional Transport, its dissolution and the transfer of its functions, etc to Transport for London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 271 et seq. As to urban development corporations see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1428 et seq.

- 5 For the meaning of 'street trading licence' see PARA 1147 note 3 ante.
- 6 London Local Authorities Act 1990 s 24(1)(b). See note 4 supra.
- 7 Ibid s 24(1). See note 4 supra.
- 8 Ibid s 24(1) proviso (substituted by the London Local Authorities Act 1994 s 6(2)).
- 9 le the powers contained in any of the enactments referred to in the London Local Authorities Act 1990 Sch 2 column (2): see PARA 1146 note 3 ante.
- 10 Ibid s 24(2).
- 11 Ibid s 24(3).
- 12 Ibid s 24(10).
- 13 Ibid s 24(11).

UPDATE

1148 Designation of licence streets

NOTE 3--In head (2) of the definition of 'street', for 'have access without payment', substitute 'obtain access without payment (a) whether or not they need the consent of the owner or occupier; and (b) if they do, whether or not they have obtained it': 1990 Act s 21(1) (definition amended by London Local Authorities Act 2007 s 38(3)).

NOTE 4--London Local Authorities Act 1990 s 24(6) amended: Transport for London (Consequential Provisions) Order 2003, SI 2003/1615.

Strategic Rail Authority abolished and functions transferred: Railways Act 2005 Pt 1; SI 2006/2925.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(ii) Street Trading under the London Local Authorities Act 1990/1149. Application for street trading licences.

1149. Application for street trading licences.

An application for a street trading licence¹ or renewal of such a licence must be made in writing to the borough council², and in the case of an application for the renewal of a licence must be made not later than two months or earlier than three months before the date on which that licence, unless revoked or surrendered, will cease to be valid³. A borough council may renew a licence, other than a temporary licence⁴, notwithstanding that application has been made for such renewal at a later date than that specified above, if it considers it reasonable in the circumstances so to do⁵.

In the application, the applicant must state:

- 64 (1) in the case of an application by an individual, his full name and address and date of birth⁶;
- 65 (2) in the case of an application for a licence to carry on ice-cream trading⁷ (a) by a company incorporated under the Companies Acts, the name of the company and its registered office; and (b) by a partnership, the names of its members and the address of its principal office⁸;
- 66 (3) the licence street in which, the days on which and the times between which he desires to trade⁹;
- 67 (4) the description of articles, things or services in which he desires to trade¹⁰; and
- 68 (5) such other particulars, relevant to street trading¹¹, as the borough council may reasonably require¹².

The applicant may in the case of an individual specify the name and address of a relative of his who is associated with, or dependent upon, the business of street trading in respect of which the application is made and to whom he desires the licence to be granted in any of certain events¹³.

A street trading licence may not be granted:

- 69 (i) to a person under the age of 17 years¹⁴;
- 70 (ii) except where the application is made by a company incorporated under the Companies Acts, or by a partnership, for a licence to carry on ice-cream trading to a person, on a corresponding day, days or time, who holds a street trading licence in any other licence street¹⁵;
- 71 (iii) except where the application is made by a company incorporated under the Companies Acts, or by a partnership, for a licence to carry on ice-cream trading to a body corporate or to an unincorporated association¹⁶;
- 72 (iv) in respect of an application for a licence which is not a temporary licence to trade in a street¹⁷ which is not a licence street¹⁸; or
- 73 (v) where the street to which the application relates is a street in respect of which the borough council has by resolution¹⁹ specified a class of articles or things, or services which it will not prescribe in any street trading licence and the grant²⁰ of the licence would be contrary to any of the terms of that resolution²¹.

A street trading licence may not be granted unless the borough council is satisfied that there is enough space in the street for the applicant to engage in the trading in which he desires to engage without causing undue interference or inconvenience to persons or vehicular traffic using the street²².

Subject to the conditions prescribed above²³, the borough council must grant an application for a street trading licence unless it considers that the application ought to be refused on one or more of the following grounds²⁴. The grounds on which a borough council may refuse an application for a street traders licence are that:

- 74 (A) there are enough traders trading in the street or in any street adjoining the street in respect of which the application is made in the goods in which the applicant desires to trade²⁵;
- 75 (B) the applicant is on account of misconduct or for any other sufficient reason unsuitable to hold the licence²⁶;
- 76 (C) the applicant is an individual who has without reasonable excuse failed personally to avail himself fully of a previous street trading licence²⁷;
- 77 (D) the applicant has at any time been granted a street trading licence by the borough council which was revoked or could have been revoked on the grounds that he had refused or neglected to pay fees or other charges due to the borough council in respect of the licence²⁸;
- 78 (E) the applicant has failed to provide or to identify suitable or adequate premises for the storage of any receptacles²⁹ or perishable goods in which he proposes to trade when street trading is not taking place³⁰;
- 79 (F) the application is for the grant (but not the renewal) of a street trading licence and the only available position is in that part of the street which is contiguous with the frontage of a shop, and the articles, things or services mentioned in the application are sold or provided at the shop³¹; or
- 80 (G) the application is for the grant (but not the renewal) of a street trading licence and the only available position in the street is within the curtilage of a shop and the applicant is not the owner or occupier of the premises comprising the shop³².

A licence holder may at any time surrender his licence to the borough council and it then ceases to be valid³³.

1 For the meaning of 'street trading licence' see PARA 1147 note 3 ante.

2 For the meaning of 'borough council' see PARA 1146 note 2 ante.

3 London Local Authorities Act 1990 s 25(1). No later than the date on which he submits his application, the applicant must hand to an authorised officer two identical full-face photographs of himself, taken within the preceding 12 months, signed by the applicant on the reverse except where the application is made by a company incorporated under the Companies Acts, or by a partnership, for a licence to carry on ice-cream trading; s 25(3). 'Authorised officer' means an officer of a borough council authorised by the council in writing to act in relation to the relevant provision of the London Local Authorities Act 1990: s 2.

If (1) a person is licensed to trade in a street under the provisions of any local enactment; and (2) the street becomes a licence street under Pt III (ss 21-41) (as amended); and (3) he was trading from a fixed position in the street immediately before it became a licence street; and (4) within two months from the appointed day (see PARA 1146 ante) he applies for a street trading licence to trade in the street, his application must not be refused: s 25(8), which is expressed to be subject to s 25(4) (see the text to notes 14-22 infra). A borough council, when considering applications for licences to trade in licence streets under Pt III (as amended), must give preference to applications from persons who immediately before the appointed day were under the provisions of any local enactment authorised to trade in a street in the borough which is not a licence street: s 25(9), which is expressed to be subject to s 25(4), (6), (8): see the text and notes 14-32 infra. For the meaning of 'licence street' see PARA 1147 note 2 ante.

4 For the meaning of 'temporary licence' see PARA 1154 note 3 post.

5 London Local Authorities Act 1990 s 25(1) proviso.

6 Ibid s 25(2)(a).

7 'Ice-cream trading' means the selling, exposing or offering for sale of goods consisting wholly or mainly of ice-cream, frozen confectionery or other similar commodities from a vehicle: ibid s 21(1).

8 Ibid s 25(2)(b). A borough council, when considering applications for licences to carry on ice-cream trading in a licence street must treat all applicants, whether companies, partnerships or individuals, on an equal footing and in particular it must not treat individuals less favourably than companies or partnerships, and as between applicants who are companies or partnerships, it must not treat any particular company or partnership more favourably than others: s 25(10).

9 Ibid s 25(2)(c).

10 Ibid s 25(2)(d).

11 For the meaning of 'street trading' see PARA 1147 ante.

12 London Local Authorities Act 1990 s 25(2)(e).

13 Ibid s 25(2). The text refers to any of the events specified in s 26(1)(a) (see PARA 1150 post: succession).

14 Ibid s 25(4)(a)(i).

15 Ibid s 25(4)(a)(ii). However, this does not prevent the renewal of such a licence: see s 25(4)(a)(ii).

16 Ibid s 25(4)(a)(iii).

17 For the meaning of 'street' see PARA 1148 note 3 ante.

18 London Local Authorities Act 1990 s 25(4)(a)(iv).

19 It passed under ibid s 24(1)(b) (designation of licence streets): see PARA 1148 ante.

20 'Grant', unless the context otherwise requires, includes renew and renewal, and cognate words are construed accordingly: ibid s 21(1).

21 Ibid s 25(4)(a)(v).

22 Ibid s 25(4)(b).

23 See the text to notes 14-22 supra.

24 London Local Authorities Act 1990 s 25(5).

25 Ibid s 25(6)(a). If the borough council considers that grounds for refusal exist under head (A) or head (C) in the text it may grant the applicant a licence which permits him to trade on fewer days or during a shorter period in each day than is specified in the application, or to trade only in one or more of the descriptions of goods specified in the application: s 25(7).

A borough council must not refuse to grant or renew a licence on any of the grounds mentioned in s 25(6) (see heads (A)-(G) in the text) unless it has given to the applicant or licence holder not less than 21 days' previous notice in writing that objection has been or will be taken to such grant or renewal or that such revocation or variation is proposed, specifying the ground or grounds on which its decision would be based and giving him an opportunity to appear before the committee, sub-committee or officer determining the matter: s 29(1). A borough council must not proceed to determine any matter referred to in s 29(1) until the expiry of the period specified in the notice so given, and in determining any such matter, it must consider any representations made by an applicant or licence holder in respect of that matter: s 29(2). A borough council must not refuse to grant or renew a licence on the ground only that the applicant or licensee, being an individual, does not reside in the borough: s 29(3). If the borough council refuses to grant or renew a licence it must notify the applicant or licence holder in writing of its decision and of the ground or grounds for such refusal, and it must notify the applicant or licence holder of his rights of appeal (if any) specified s 30 (as amended) (see PARA 1153 post): s 29(4).

26 Ibid s 25(6)(b). See note 25 supra.

27 Ibid s 25(6)(c). See note 25 supra.

- 28 Ibid s 25(6)(d). See note 25 supra.
- 29 For the meaning of 'receptacle' see PARA 1147 note 1 ante.
- 30 London Local Authorities Act 1990 s 25(6)(e). See note 25 supra.
- 31 Ibid s 25(6)(f). See note 25 supra.
- 32 Ibid s 25(6)(g). See note 25 supra.
- 33 Ibid s 25(11).

UPDATE

1149 Application for street trading licences

TEXT AND NOTES 1-22--1990 Act s 25(1), (4) amended, s 25(2A) added: London Local Authorities Act 2007 s 39.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(ii) Street Trading under the London Local Authorities Act 1990/1150. Succession.

1150. Succession.

When the holder of a licence who is an individual has specified the name and address of a relative¹ to whom he desires the licence to be granted if he (1) dies²; or (2) retires having reached the normal age for retirement³; or (3) notifies the borough council⁴ that owing to ill-health he is unable to continue to engage in the street trading⁵ permitted by the licence, and submits evidence to satisfy the borough council as to his ill-health⁶, the borough council must not⁷ grant⁸ a licence in respect to the position or place in a street at which the former licensee was entitled to engage in street trading under the authority of his licence until the expiration of 28 days from the date of the death of the licensee or his retirement or receiving the notification, as the case may be⁹. If during that period of 28 days the person specified by the holder of the licence, when making application for the licence, as the relative to whom he desired the licence to be granted in any of the events mentioned in heads (1) to (3) above makes application for the grant of a licence in respect of the position or place available in the street the borough council must¹⁰ grant a licence to that person¹¹.

1 For the purposes of the London Local Authorities Act 1990 s 26, a person is treated as being related to another if the latter is the wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister of the former and is deemed to be so related notwithstanding that he is so related only through an illegitimacy or in consequence of an adoption: s 26(2).

2 Ibid s 26(1)(a)(i).

3 Ibid s 26(1)(a)(ii).

4 For the meaning of 'borough council' see PARA 1146 note 2 ante.

5 For the meaning of 'street trading' see PARA 1147 ante.

6 London Local Authorities Act 1990 s 26(1)(a)(i).

7 Ie except as provided by ibid s 26(1)(b): see the text to notes 10-11 infra.

8 As to the meaning of 'grant' see PARA 1149 note 20 ante.

9 London Local Authorities Act 1990 s 26(1)(a).

10 Ie save as provided by ibid s 25(6)(b)-(e): see PARA 1149 ante.

11 Ibid s 26(1)(b).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(ii) Street Trading under the London Local Authorities Act 1990/1151. Conditions of street trading licences.

1151. Conditions of street trading licences.

A street trading licence¹ is, unless it is revoked² or surrendered, valid for a period of three years from the date on which it is granted, or for such shorter period as the borough council³ may determine⁴. It must specify the conditions⁵ and, in the case of an individual, incorporate one of the submitted photographs of the licence holder⁶. On any occasion of the renewal of a licence, or at 1 January in any year during the currency of it, (whether on application by the licence holder or otherwise) or at any time on application by the licence holder, the borough council may vary the conditions⁷. Where a licence is granted to a company incorporated under the Companies Acts⁸ or to a partnership to carry on ice-cream trading⁹, any individual carrying on ice-cream trading in accordance with that licence must at all times while he is so trading carry with him a recent photograph of himself authenticated by the company or on behalf of the partnership, as the case may be, which holds the licence¹⁰.

The borough council may make regulations¹¹ prescribing standard conditions which it may attach to the licence on the occasion of its grant or renewal¹². The standard conditions must include such conditions as may be reasonable:

- 81 (1) identifying the street¹³ or streets in which and the position or place in any such street at which the licence holder may sell or expose or offer for sale articles or things, or offer or provide services under the authority of the licence¹⁴;
- 82 (2) identifying the class or classes of articles, things or services which the licence holder may so sell or expose or offer for sale or provide¹⁵;
- 83 (3) identifying the day or days on which and the time during which the licence holder may sell or expose or offer for sale such articles, things or services¹⁶;
- 84 (4) identifying the nature and type of any receptacle¹⁷ which may be used by the licence holder or in connection with any sale or exposure or offer for sale or provision of services and the number of any such receptacles which may be so used¹⁸;
- 85 (5) requiring that any receptacle so used must carry the name of the licence holder and the number of his licence¹⁹;
- 86 (6) regulating the storage of receptacles or perishable goods²⁰;
- 87 (7) regulating the deposit and removal of refuse and the containers to be used for the deposit of such refuse and their location pending its removal²¹; and
- 88 (8) requiring that the licence holder must commence trading or exercising his rights under the licence by a certain time on any day or forfeit his right to trade or exercise his rights under the licence on that day from the fixed position to which his licence refers²².

Before making any such regulations the borough council must: (a) publish notice of its intention to do so in a local newspaper circulating in its area, and such notice must contain a draft of the resolution to which it relates, and state that representations relating to it may be made in writing to the borough council within such period, not less than 28 days after the publication of the notice, as may be specified in the notice²³; and (b) consult the licence holders or a body or bodies representative of them²⁴. As soon as practicable after the expiry of the 28 day period, the borough council must consider any representations relating to the proposed regulations which it has received before the expiry of that period²⁵. After the borough council has considered those representations it may, if it thinks fit, make such regulations²⁶ and it must

notify the licence holders or a body or bodies representative of them of the making of such regulations²⁷.

When granting a licence a borough council must give to the licence holder a copy of the licence which, in the case of an individual, must bear his photograph²⁸.

1 le a licence granted under the London Local Authorities Act 1990 s 25: see PARA 1149 ante. For the meaning of 'street trading licence' see PARA 1147 note 3 ante.

2 As to the revocation of street trading licences see PARA 1152 post.

3 For the meaning of 'borough council' see PARA 1146 note 2 ante.

4 London Local Authorities Act 1990 s 27(1)(a). A borough council must not vary a licence under s 27(1) unless it has given to the licence holder not less than 21 days' previous notice in writing that such variation is proposed, specifying the ground or grounds on which its decision would be based and giving him an opportunity to appear before the committee, sub-committee or officer determining the matter: s 29(1). A borough council must not proceed to determine any matter referred to in s 29(1) until the expiry of the period specified in the notice so given, and in determining any of the matters referred to, it must consider any representations made by an applicant or licence holder in respect of that matter: s 29(2). If the borough council decides to vary a licence it must notify the applicant or licence holder in writing of its decision and of the ground or grounds for such variation, and it must notify the licence holder of his rights of appeal (if any) specified in s 30 (as amended) (see PARA 1153 post): s 29(4).

5 Ibid s 27(1)(b). See note 4 supra.

6 Ibid s 27(1)(c). See note 4 supra. The text refers to a photograph submitted under s 25(3): see PARA 1149 ante.

7 Ibid s 27(1). See note 4 supra.

8 See generally COMPANIES.

9 For the meaning of 'ice-cream trading' see PARA 1149 note 7 ante.

10 London Local Authorities Act 1990 s 27(2).

11 Such regulations are not made by statutory instrument and are not recorded in this work.

12 London Local Authorities Act 1990 s 27(3). Without prejudice to the standard conditions, the borough council may in addition attach to a licence such further conditions as appear to it to be reasonable in any individual case: s 27(8).

13 As to the meaning of 'street' see PARA 1148 note 3 ante.

14 London Local Authorities Act 1990 s 27(7)(a).

15 Ibid s 27(7)(b).

16 Ibid s 27(7)(c).

17 As to the meaning of 'receptacle' see PARA 1147 note 1 ante.

18 London Local Authorities Act 1990 s 27(7)(d).

19 Ibid s 27(7)(e).

20 Ibid s 27(7)(f).

21 Ibid s 27(7)(g).

22 Ibid s 27(7)(h).

23 Ibid s 27(4)(a).

24 Ibid s 27(4)(b).

- 25 Ibid s 27(5).
- 26 le regulations as mentioned in ibid s 27(3): see the text to notes 11-12 supra.
- 27 Ibid s 27(6) (amended by the London Local Authorities Act 1994 s 6(3)).
- 28 London Local Authorities Act 1990 s 27(9).

UPDATE

1151 Conditions of street trading licences

NOTE 18--See *R (on the application of Banks) v Tower Hamlets LBC* [2009] EWHC 242 (Admin), [2009] All ER (D) 137 (Aug) (complaint dismissed that council tolerated use of receptacles larger than that specified in its standard conditions for street trading licences, in breach of undertaking given to court).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(ii) Street Trading under the London Local Authorities Act 1990/1152. Revocation or variation of street trading licences.

1152. Revocation or variation of street trading licences.

A borough council¹ may at any time revoke² a street trading licence³ if it is satisfied that⁴:

- 89 (1) owing to circumstances which have arisen since the grant or renewal of the licence, there is not enough space in the street⁵ in which the licence holder trades for him to engage in the trading permitted by the licence without causing undue interference or inconvenience to persons or vehicular traffic using the street⁶;
- 90 (2) the licence holder is trading in a class of articles, things or services which the borough council has resolved⁷ not to prescribe in licences granted for the licence street⁸ in which the licence holder trades⁹;
- 91 (3) the licence holder is an individual who has without reasonable excuse personally failed fully to avail himself of his licence¹⁰;
- 92 (4) the licence holder is on account of misconduct or for any other sufficient reason unsuitable to hold the licence¹¹;
- 93 (5) since the grant or renewal of the licence, the licence holder has for a period of four weeks or more failed to pay fees or charges due to the borough council in connection with the street trading licence or has failed to pay any charges due from him for accommodation provided¹²;
- 94 (6) since the grant or renewal of the licence, the licence holder has failed to make provision for the suitable and adequate storage of the receptacles¹³ used by him for trading or for any perishable goods in which he trades when trading is not taking place¹⁴;
- 95 (7) since the grant or renewal of the licence, the licence holder has persistently failed to remove to a place of storage the receptacles used by him for trading¹⁵; or
- 96 (8) the licence holder has persistently failed to comply with any condition of his licence¹⁶.

If a borough council considers that a licence could be revoked on any of the grounds mentioned in heads (1) to (3) above it may, instead of revoking it, vary¹⁷ its conditions by attaching further conditions: (a) reducing the number of days in any week or the period in any one day during which the licence holder is permitted to trade¹⁸; (b) specifying a different licence street or position or place in any such street at which the licence holder may sell or expose or offer for sale articles or things or offer or provide services¹⁹; or (c) restricting the description of articles, things or services in which the licence holder is permitted to trade²⁰.

1 For the meaning of 'borough council' see PARA 1146 note 2 ante.

2 A borough council must not revoke or vary a licence under s 28 unless it has given to the licence holder not less than 21 days' previous notice in writing that such revocation or variation is proposed, specifying the ground or grounds on which its decision would be based and giving him an opportunity to appear before the committee, sub-committee or officer determining the matter: London Local Authorities Act 1990 s 29(1). A borough council must not proceed to determine any matter referred to in s 29(1) until the expiry of the period specified in the notice so given, and in determining any such matter, it must consider any representations made by a licence holder in respect of that matter: s 29(2). A borough council must not revoke a licence on the ground only that the applicant or licensee, being an individual, does not reside in the borough: s 29(3). If the borough council decides to revoke or vary a licence it must notify the applicant or licence holder in writing of its

decision and of the ground or grounds for such revocation or variation, and it must notify the licence holder of his rights of appeal (if any) specified in s 30 (as amended) (see PARA 1153 post): s 29(4).

3 For the meaning of 'street trading licence' see PARA 1147 note 3 ante.

4 London Local Authorities Act 1990 s 28(1), which is expressed to be subject to the provisions of Pt III (ss 21-41) (as amended) (see PARA 1147 et seq ante).

5 As to the meaning of 'street' see PARA 1148 note 3 ante.

6 London Local Authorities Act 1990 s 28(1)(a).

7 le resolved under ibid s 24(1)(b) (designation of licence streets): see PARA 1148 ante.

8 For the meaning of 'licence street' see PARA 1147 note 2 ante.

9 London Local Authorities Act 1990 s 28(1)(b).

10 Ibid s 28(1)(c).

11 Ibid s 28(1)(d).

12 Ibid s 28(1)(e). The text refers to containers provided in pursuance of s 33(2) (receptacles and containers): see PARA 1156 post.

13 As to the meaning of 'receptacle' see PARA 1147 note 1 ante.

14 London Local Authorities Act 1990 s 28(1)(f).

15 Ibid s 28(1)(g).

16 Ibid s 28(1)(h).

17 See note 2 supra.

18 London Local Authorities Act 1990 s 28(2)(a).

19 Ibid s 28(2)(b).

20 Ibid s 28(2)(c).

UPDATE

1152 Revocation or variation of street trading licences

TEXT AND NOTES--In the case of a street trading licence which authorises street trading on land which falls within head (2) in the definition of 'street' in the 1990 Act s 21(1) (see PARA 1148), the licence will lapse if (1) the consent is discontinued by the person who gave it, or a successor in title of that person, and the council is provided with written notice of the discontinuation of the consent by the person who discontinues it; or (2) the holder of the licence no longer is the owner of the land in question, as the case may be: s 29A (added by London Local Authorities Act 2007 s 40(2)).

NOTE 2--1990 Act s 29(4) amended: 2007 Act s 40(1).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(ii) Street Trading under the London Local Authorities Act 1990/1153. Appeals.

1153. Appeals.

Any person aggrieved¹:

- 97 (1) by the refusal of a borough council² to renew a licence on the ground that it is not satisfied³ as to there being adequate space for the street trading for which the licence is sought⁴;
- 98 (2) by the refusal of a borough council to renew a licence on any of the grounds⁵ for the refusal of an application for a street trading licence⁶;
- 99 (3) by a decision of a borough council⁷ to grant⁸ him a licence either on terms⁹ different from those on the licence which he previously held or different from those for which he applied¹⁰;
- 100 (4) by any further condition attached by a borough council¹¹ in addition to the standard conditions¹²;
- 101 (5) by a decision of the borough council either to vary the conditions of a licence¹³, or to revoke¹⁴ a licence¹⁵; or
- 102 (6) by a resolution of a borough council¹⁶ in relation to ice-cream trading¹⁷,

may appeal to a magistrates' court acting for the area in which the licence street¹⁸ is situated¹⁹.

A person desiring to appeal against such refusal or decision²⁰ must give a written notice to the magistrates' court and to the borough council specifying the refusal or decision against which he wishes to appeal and the grounds upon which such appeal is made²¹. Such an appeal by either party against the decision of the magistrates' court may be brought to the Crown Court²². On such an appeal to the magistrates' court or to the Crown Court, the court may make such order as it thinks fit²³.

Where a licence holder applies for renewal of his licence, his existing licence remains valid (a) until the grant by the borough council of a new licence with the same conditions²⁴; or (b) if the borough council refuses renewal of the licence or decides to grant a licence with conditions different from those of the existing licence and he has a right of appeal²⁵, until the time for bringing an appeal has expired or where an appeal is duly brought, until the determination or abandonment of the appeal²⁶; or (c) if he has no right of appeal²⁷ until the borough council either grants him a new licence with conditions different from those of the existing licence or notifies him of its decision to refuse his application²⁸.

Where a borough council decides to vary the conditions of or revoke a licence²⁹ and a right of appeal is available to the licence holder³⁰, the variation or revocation does not take effect until the time for bringing an appeal has expired or where an appeal is duly brought, until the determination or abandonment of the appeal³¹.

In addition, any person aggrieved by (i) a resolution rescinding or varying a designating resolution³²; (ii) a resolution relating to the designation of licence streets³³; (iii) a standard condition³⁴; or (iv) the amount of a fee or charge³⁵, may appeal to the Secretary of State³⁶ whose decision is final³⁷.

1 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

2 For the meaning of 'borough council' see PARA 1146 note 2 ante.

3 le not satisfied as mentioned in the London Local Authorities Act 1990 s 25(4)(b): see PARA 1149 ante.

4 Ibid s 30(1)(aa) (added by the London Local Authorities Act 1994 s 6(4)).

5 le the grounds mentioned in the London Local Authorities Act 1990 s 25(6)(a)-(e): see PARA 1149 ante.

6 Ibid s 30(1)(a).

7 le under ibid s 25(7): see PARA 1149 ante.

8 As to the meaning of 'grant' see PARA 1149 note 20 ante.

9 le terms mentioned in the London Local Authorities Act 1990 s 25(7): see PARA 1149 ante.

10 Ibid s 30(1)(b).

11 le under ibid s 27(8): see PARA 1151 ante.

12 Ibid s 30(1)(c).

13 le under ibid s 28(2): see PARA 1152 ante.

14 le under ibid s 28(1): see PARA 1152 ante.

15 Ibid s 30(1)(d) (added by the London Local Authorities Act 1994 s 6(5)).

16 le under the London Local Authorities Act 1990 s 37 (as amended): see PARA 1158 post.

17 Ibid s 30(1)(e).

18 For the meaning of 'licence street' see PARA 1147 note 2 ante.

19 London Local Authorities Act 1990 s 30(1). An appeal under s 30(1) (as amended) may be brought (1) in the case of an appeal under heads (1)-(5) in the text, at any time before the expiration of the period of 21 days beginning with the date upon which notification in writing is given of the refusal or decision; (2) in the case of an appeal under head (6) in the text, at any time before the expiration of the period of 21 days beginning with the date of the second publication of the notice required by the London Local Authorities Act 1990 s 24(10) (designation of licence streets) (see PARA 1148 ante) as applied by s 37 (as amended) (see PARA 1158 post): s 30(2) (amended by the London Local Authorities Act 1994 s 6(6)).

20 le such refusal or decision as is mentioned in the London Local Authorities Act 1990 s 30(1) (as amended): see the text and notes 1-19 supra.

21 Ibid s 30(3).

22 Ibid s 30(4).

23 Ibid s 30(5). Subject to s 30(7)-(9) (see the text and notes 24-31 infra), it is the duty of the borough council to give effect to the order of the magistrates' court or the Crown Court: s 30(6). A borough council need not give effect to the order of the magistrates' court until the time for bringing an appeal under s 30(4) (see the text to note 22 supra) has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal: s 30(7).

24 Ibid s 30(8)(a). An application under the Supreme Court Act 1981 s 31 (application for judicial review) or under the Rules of the Supreme Court 1965 in respect of any matter which is or could be the subject of an appeal to the magistrates' court or to the Crown Court under the London Local Authorities Act 1990 s 30 (as amended) is not treated as an appeal for the purposes of s 30(8) or s 30(9) (see the text to notes 25-31 infra): s 30(10). As to the RSC and the introduction of the Civil Procedure Rules (CPR) in respect of proceedings commenced on or after 26 April 1999 see CIVIL PROCEDURE.

25 le a right of appeal under ibid s 30 (as amended).

26 Ibid s 30(8)(b). See note 24 supra.

27 le a right of appeal under ibid s 30 (as amended).

28 Ibid s 30(8)(c). See note 24 supra.

29 le under *ibid* s 28(1): see PARA 1152 ante.

30 le a right of appeal under *ibid* s 30 (as amended).

31 *Ibid* s 30(9). See note 24 *supra*.

32 *Ibid* s 30(11)(a). For the meaning of 'designating resolution' see PARA 1148 ante.

33 *Ibid* s 30(11)(b). The text refers to a resolution under s 24(1)(b): see PARA 1148 ante. For the meaning of 'licence street' see PARA 1147 note 2 ante.

34 *Ibid* s 30(11)(c). The text refers to a standard condition prescribed by regulations under s 27(3): see PARA 1151 ante.

35 *Ibid* s 30(11)(d). The text refers to a fee or charge under s 32 (as amended): see PARA 1155 post.

36 As to the Secretary of State see PARA 1023 note 3 ante.

37 London Local Authorities Act 1990 s 30(11). An appeal under s 30(11) may be brought (1) in the case of an appeal under head (i) or head (ii) in the text, at any time before the expiration of the period of three months beginning with the date on which notice of the passing of the resolution is published for the second time in accordance with s 24(10) (see PARA 1148 ante); (2) in the case of an appeal under head (iii) in the text, at any time before the expiration of the period of three months beginning with the date upon which the licence holders or a body or bodies representative of them were notified of the making of the regulations; and (3) in the case of an appeal under head (iv) in the text (a) if it relates to the amount of a fee payable under s 32(1) (see PARA 1155 post), at any time before the expiration of the period of three months beginning with the date on which the fee payable is notified to the licence holders or a body or bodies representative of them; and (b) if it relates to the amount of a charge under s 32(2) (see PARA 1155 post), at any time before the expiration of the period of three months beginning with the date on which notice of the determination of the charge has been given to the licence holders or a body or bodies representative of them: s 30(12) (added by the London Local Authorities Act 1994 s 6(7)).

UPDATE

1153 Appeals

NOTE 24--As from 1 October 2009 (see SI 2009/1604) Supreme Court Act 1981 cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(ii) Street Trading under the London Local Authorities Act 1990/1154. Temporary licences.

1154. Temporary licences.

A borough council¹ may, if it thinks fit, on the receipt from any person of an application for that purpose and accompanied by the appropriate fee² grant to that person a temporary licence³. A temporary licence is valid only for the day or period specified in the licence and is in the like form as a street trading licence⁴ with such modifications as the circumstances require, and prescribes such conditions as the borough council deems appropriate⁵.

Where the holder of a street trading licence is not for the time being exercising his rights under the licence, a temporary licence authorising street trading⁶ in the position or place prescribed by the street trading licence may be granted to any other person but is subject to the condition that it ceases to be valid if, during the currency of it, the holder of the licence desires to resume the exercise of his rights and gives the appropriate notice⁷.

1 For the meaning of 'borough council' see PARA 1146 note 2 ante.

2 For these purposes, 'appropriate fee' means such fee as the borough council may have determined under s 32 (as amended) (fees and charges): see PARA 1155 post.

3 London Local Authorities Act 1990 s 31(1). 'Temporary licence' means a licence granted under Pt III (ss 21-41) (as amended) valid for a single day or for such period as may be specified in the licence not exceeding six months: s 21(1).

4 For the meaning of 'street trading licence' see PARA 1147 note 3 ante.

5 London Local Authorities Act 1990 s 31(2).

6 For the meaning of 'street trading' see PARA 1147 ante.

7 London Local Authorities Act 1990 s 31(3). For these purposes, 'the appropriate notice' means: (1) in the case of a holder of a licence who has not exercised his rights under the licence for a period of at least 14 days, 7 days' notice; and (2) in any other case, 24 hours' notice: s 31(3).

UPDATE

1154 Temporary licences

TEXT AND NOTE 3--See further 1990 Act s 31(1A)-(1F) (added by London Local Authorities Act 2007 s 41).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(ii) Street Trading under the London Local Authorities Act 1990/1155. Fees and charges.

1155. Fees and charges.

A borough council¹ may charge such fees for the grant or renewal² of a street trading licence³, the grant of a temporary licence⁴ or for the variation at the request of the licence holder of the conditions of a street trading licence as it may determine and as may be sufficient in the aggregate to cover in whole or in part the reasonable administrative or other costs in connection with its functions⁵ not otherwise recovered⁶. A borough council may recover from licence holders such charges as may be sufficient in the aggregate taking one year with another to cover the reasonable costs, not otherwise recovered, of:

- 103 (1) the collection, removal and disposal of refuse or other services rendered by it to such holders⁷;
- 104 (2) the cleansing of streets⁸ in which street trading⁹ takes place in so far as that cleansing is attributable to such trading¹⁰;
- 105 (3) any reasonable administrative or other costs incurred in connection with the administration of Part III of the London Local Authorities Act 1990¹¹; and
- 106 (4) the cost of enforcing the provisions of Part III of the London Local Authorities Act 1990¹².

Before determining charges to be made under heads (1) to (4) above, whether originally or by way of variation of charges previously determined, a borough council must: (a) give notice of the proposed charges to licence holders or to a body or bodies representative of them; and (b) publish notice of the proposed charges in a newspaper circulating in the area in which the licence street¹³ or streets in respect of which the charges will be applied is situated¹⁴.

When a borough council has determined its fees or charges¹⁵, whether originally or by way of variation of fees or charges previously determined, it must give notice of the fees or charges so determined and of the date on which those fees or charges are to be brought into effect, in the manner prescribed¹⁶.

1 For the meaning of 'borough council' see PARA 1146 note 2 ante.

2 Ie under the London Local Authorities Act 1990 Pt III (ss 21-41) (as amended): see PARA 1147 et seq ante.

3 For the meaning of 'street trading licence' see PARA 1147 note 3 ante.

4 For the meaning of 'temporary licence' see PARA 1154 note 3 ante.

5 Ie its functions under the London Local Authorities Act 1990 Pt III (as amended).

6 Ibid s 32(1). A borough council may require that every application for a licence under Pt III (as amended) be accompanied by the whole or part of the fee determined under s 32(1), and determine that the fee may be paid by instalments: s 32(4). Where a borough council refuses to renew a licence it must repay to the person who made the application the amount of any such fee paid by him: s 32(5) (amended by the London Local Authorities Act 1994 s 6(8)). Where a licence is revoked otherwise than under the London Local Authorities Act 1990 s 28(1)(a), (b) (see PARA 1152 ante) or is surrendered, the borough council may remit or refund, as it considers appropriate, the whole or a part of any fee paid for the grant or renewal of the licence, or of any charges recoverable under s 32(2) (see the text to notes 7-12 infra): s 32(12).

7 Ibid s 32(2)(a). A borough council may determine that charges under heads (1)-(4) in the text must be included in a fee payable under s 32(1) (see the text to notes 1-6 supra), or that they are separately recoverable: s 32(3). A borough council may determine the fees to be charged on the grant of a temporary

licence under s 31, and in doing so it must have regard to the matters specified in s 32(2) and such fees must be included in the computation for the purposes of determining the fees and charges under s 32(1), (2) (see the text and notes 1-6 supra, 8-12 infra): s 32(6).

8 As to the meaning of 'street' see PARA 1148 note 3 ante.

9 For the meaning of 'street trading' see PARA 1147 ante.

10 London Local Authorities Act 1990 s 32(2)(b). See note 7 supra.

11 Ibid s 32(2)(c). See note 7 supra.

12 Ibid s 32(2)(d). See note 7 supra.

13 For the meaning of 'licence street' see PARA 1147 note 2 ante.

14 London Local Authorities Act 1990 s 32(7) (amended by the London Local Authorities Act 1994 s 6(8)). A notice under head (b) in the text must be accompanied by a statement showing how the proposed charges have been computed, and any body representative of licence holders may request the borough council to supply such further information or explanation with regard to the proposed charges as the body may reasonably require in order to ascertain whether the proposed charges are reasonable and have been computed in accordance with the provisions of the London Local Authorities Act 1990 s 32 (as amended): s 32(7A) (added by the London Local Authorities Act 1994 s 6(8)). Such a notice must specify a reasonable period being not less than 28 days from the date of publication of the newspaper referred to in head (b) in the text within which written representations concerning the proposed charges may be made to the borough council: London Local Authorities Act 1990 s 32(8). It is the duty of a borough council to (1) consider any such representations which are made to it within the period specified in the notice; and (2) comply with any request made under s 32(7A) (as added), and where any such request is made the period so specified, if still current, must be treated as extended by the number of days in the period beginning with the day on which the request is made and ending with that on which it is complied with: s 32(9) (amended by the London Local Authorities Act 1994 s 6(8)).

15 Ie under the London Local Authorities Act 1990 s 32(1), (2).

16 Ibid s 32(10) (substituted by the London Local Authorities Act 1994 s 6(8)). The text refers to the manner prescribed by the London Local Authorities Act 1990 s 32(7) (as amended) (see note 14 supra). Where a licence is revoked under s 28(1)(a), (b) (see PARA 1152 ante), the borough council must refund the appropriate part of any fee paid for the grant or renewal of the licence: s 32(11).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(ii) Street Trading under the London Local Authorities Act 1990/1156. Receptacles and containers.

1156. Receptacles and containers.

A borough council¹ may sell or let on hire or otherwise provide to any person holding a street trading licence² or a temporary licence³ receptacles⁴ for use by him in street trading⁵. It may also provide and maintain accommodation for the storage of receptacles and containers for the deposit of refuse arising in the course of street trading and for that purpose may adapt any premises or erect any buildings on any land belonging to it but not already appropriated for such purpose, and make such charges as it thinks fit for the use of such accommodation⁶.

Where any receptacle used by a licence holder is not removed to a place of storage on the cessation of trading on any day it is lawful for the borough council to cause it to be removed to a place of storage and to recover from the licence holder the costs incurred by it in removing and storing the receptacle⁷. Such charges as the borough council may fix as the cost of removing and storing a receptacle, are payable by the licence holder before the return of the receptacle to him⁸.

1 For the meaning of 'borough council' see PARA 1146 note 2 ante.

2 For the meaning of 'street trading licence' see PARA 1147 note 3 ante.

3 For the meaning of 'temporary licence' see PARA 1154 note 3 ante.

4 As to the meaning of 'receptacle' see PARA 1147 note 1 ante.

5 London Local Authorities Act 1990 s 33(1). For the meaning of 'street trading' see PARA 1147 ante.

6 Ibid s 33(2).

7 Ibid s 35(1). Section 35(1) is without prejudice to the power of the borough council to prosecute the licence holder for any breach of the conditions of his licence arising from the failure to remove the receptacle: s 35(3). As to the conditions which may be attached to a street trading licence see PARA 1151 ante; and as to offences see PARA 1157 post.

8 Ibid s 35(2).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(ii) Street Trading under the London Local Authorities Act 1990/1157. Offences.

1157. Offences.

Any person who:

- 107 (1) without reasonable excuse contravenes any of the conditions of a street trading licence¹ or a temporary licence²;
- 108 (2) in connection with an application for a street trading licence or a temporary licence makes a statement which he knows to be false in a material particular³;
- 109 (3) resists or intentionally obstructs any authorised officer of a borough council⁴ in the execution of his duties⁵; or
- 110 (4) fails on demand without reasonable excuse in the case of an individual licence holder to produce his licence duly signed by him and bearing his photograph, and, in the case of an individual carrying on ice-cream trading⁶ under a licence granted to a company incorporated under the Companies Acts to a partnership, to produce the photograph required by the conditions of his street trading licence⁷ to an authorised officer of the borough council or to a constable⁸,

is guilty of an offence and liable on summary conviction to a fine⁹.

1 For the meaning of 'street trading licence' see PARA 1147 note 3 ante. As to the conditions which may be attached to a street trading licence see PARA 1151 ante.

2 London Local Authorities Act 1990 s 34(1) (amended by the London Local Authorities Act 1994 s 6(9)). For the meaning of 'temporary licence' see PARA 1154 note 3 ante.

3 London Local Authorities Act 1990 s 34(2).

4 For the meaning of 'borough council' see PARA 1146 note 2 ante; and for the meaning of 'authorised officer' see PARA 1149 note 3 ante.

5 London Local Authorities Act 1990 s 34(3). The text refers to duties under Pt III (ss 21-41) (as amended): see PARA 1147 et seq ante.

6 For the meaning of 'ice-cream trading' see PARA 1149 note 7 ante.

7 Ie the conditions of the London Local Authorities Act 1990 s 27(2): see PARA 1151 ante.

8 Ibid s 34(4). As to the office of constable see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

9 Ibid s 34. A person guilty of the offence is liable to a fine not exceeding level 3 on the standard scale: s 34. As to the standard scale see PARA 1012 note 6 ante.

UPDATE

1157 Offences

TEXT AND NOTE 8--Head (4). The words 'duly signed by him and' are omitted: London Local Authorities Act 1990 s 34(4) (amended by London Local Authorities Act 2007 s 42).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(ii) Street Trading under the London Local Authorities Act 1990/1158. Ice-cream trading.

1158. Ice-cream trading.

The provisions relating to street trading in Part III of the London Local Authorities Act 1990¹ do not apply to itinerant ice-cream trading² in any street³ unless that street is a licence street⁴, or the street has been designated as a prohibited street under the following provisions⁵.

If at any time it is necessary to prohibit itinerant ice-cream trading in any street in the area of a borough council⁶ which is not a licence street in the interests of preventing obstruction to traffic, or undue interference or inconvenience to persons using that street, the borough council may by resolution designate the street as a prohibited street⁷. In the case of any London borough (except the City of Westminster and the Royal Borough of Kensington and Chelsea) the borough council may so designate it for such days or for such parts of days as are specified in the resolution, and may from time to time by subsequent resolution rescind or vary any such resolution⁸. Before passing such a resolution, a borough council must consult the Metropolitan Police Commissioner⁹ and such bodies as appear to it to be representative of persons carrying on ice-cream trading in the area of the borough council¹⁰.

1 The provisions of the London Local Authorities Act 1990 Pt III (ss 21-41) (as amended): see PARA 1147 et seq ante. For the meaning of 'street trading' see PARA 1147 ante.

2 'Itinerant ice-cream trading' means ice-cream trading from a vehicle which goes from place to place remaining in any one location in the course of trading for short periods only: *ibid* s 21(1).

3 As to the meaning of 'street' see PARA 1148 note 3 ante.

4 For the meaning of 'licence street' see PARA 1147 note 2 ante.

5 London Local Authorities Act 1990 s 37(1).

6 For the meaning of 'borough council' see PARA 1146 note 2 ante.

7 London Local Authorities Act 1990 s 37(2).

8 *Ibid* s 37(2) (amended by the London Local Authorities Act 1994 s 6(10)). The London Local Authorities Act 1990 s 24(3)-(11) (designation of licence streets: see PARA 1148 ante) applies to a resolution under s 37 (as amended) as it applies to a resolution under s 24 (as amended) (see PARA 1148 ante).

9 As to the Metropolitan Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 106.

10 London Local Authorities Act 1990 s 37(3).

UPDATE

1158 Ice-cream trading

NOTE 2--'Itinerant ice cream trading' now means ice cream trading from a vehicle which goes from place to place remaining in any one location in the course of trading for periods of 15 minutes or less and not returning to that location or any other location in the same street on the same day: 1990 Act s 21(1) (definition substituted by London Local Authorities Act 2007 s 38(2)).

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(ii) Street Trading under the London Local Authorities Act 1990/1159. Unlicensed street trading.

1159. Unlicensed street trading.

A person who (1) is not the holder of a street trading licence¹ or a temporary licence² and who engages in street trading³ in a borough⁴; or (2) is the holder of a temporary licence and who engages in street trading in a borough on a day or in a place not specified in that temporary licence⁵, is guilty of an offence and liable on summary conviction to a fine⁶.

In any proceedings for such an offence or for an offence of aiding, abetting, counselling or procuring the commission of such an offence where it is shown that (a) any article or thing was displayed, whether or not in or on any receptacle⁷, in any street⁸; or (b) any receptacle or equipment used in the provision of any service was available in any street in such circumstances that a service was being offered⁹, the article or thing is presumed to have been exposed or offered for sale and the receptacle, or equipment, is presumed to have been available for the provision of a service at such time and in such position as it was displayed or available by the person having care or control or appearing to have care and control of it¹⁰. This applies unless, in either case, it is shown to the satisfaction of the court that the article or thing or receptacle or equipment was brought into that street for some purpose other than for the purpose of selling it or exposing or offering it for sale or using it in the course of the provision of the service in a street¹¹.

If an authorised officer¹² or a constable¹³ has reasonable grounds for suspecting that a person has committed such an offence he may seize any article or thing being offered or exposed for sale or receptacle being used by that person which may be required to be used in evidence in any proceedings¹⁴ in respect of that offence or may be the subject of forfeiture¹⁵, provided that no article or thing which is of a perishable nature is seized¹⁶. Where any article or thing, including any receptacle, is seized¹⁷:

- 111 (i) at the conclusion of the proceedings the article or thing must be returned to the person from whom it was seized unless the court orders it to be forfeited¹⁸;
- 112 (ii) where a receptacle so seized is a motor vehicle used for ice-cream trading¹⁹, the borough council or the Metropolitan Police Commissioner²⁰, as the case may be, must, within three days of the receipt of an application in writing by the owner or registered keeper of the vehicle, permit him to remove it²¹; and
- 113 (iii) if no proceedings are instituted before the expiration of a period of 28 days beginning with the date of seizure, or any proceedings instituted within that period are discontinued, at the expiration of that period or, as the case may be, on the discontinuance of the proceedings, the article or thing must be returned to the person from whom it was seized unless it has not proved possible, after diligent inquiry, to identify that person and ascertain his address²²;

The court by or before which a person is convicted of such an offence or for an offence of aiding, abetting, counselling or procuring the commission of such an offence may order anything produced to the court, and shown to the satisfaction of the court to relate to the offence, to be forfeited and dealt with in such manner as the court may order²³.

Where an article, thing or receptacle is seized²⁴, and:

- 114 (A) not less than six months have passed since the date of the seizure and no information has been laid against any person for an offence in respect of the acts or circumstances which occasioned the seizure²⁵; or
- 115 (B) proceedings for such an offence have been brought and either the person charged has been acquitted (whether or not on appeal) and the time for appealing against or challenging the acquittal (where applicable) has expired without an appeal or challenge being brought, or the proceedings (including any appeal) have been withdrawn by, or have failed for want of prosecution by, the person by whom the original proceedings were brought²⁶,

a person who has or at the time of seizure had a legal interest in the article, thing or receptacle seized may recover compensation from the borough council or, where it is seized by a constable, the Metropolitan Police Commissioner by civil action in the County Court in respect of any loss suffered by him as a result of the seizure²⁷. The court may not make such an order for compensation unless it is satisfied that seizure²⁸ was not lawful²⁹.

1 For the meaning of 'street trading licence' see PARA 1147 note 3 ante.

2 For the meaning of 'temporary licence' see PARA 1154 note 3 ante.

3 For the meaning of 'street trading' see PARA 1147 ante.

4 London Local Authorities Act 1990 s 38(1)(a) (s 38(1) substituted by the London Local Authorities Act 1994 s 6(11)). For the meaning of 'borough' see PARA 1146 note 2 ante.

5 London Local Authorities Act 1990 s 38(1)(b) (as substituted: see note 4 supra).

6 Ibid s 38(1) (as substituted: see note 4 supra). A person guilty of the offence is liable to a fine not exceeding level 3 on the standard scale: s 38(1) (as so substituted). As to the standard scale see PARA 1012 note 6 ante. Where an offence under s 38 (as amended) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of the offence and liable to the same maximum penalty as the body corporate: s 38(3).

7 As to the meaning of 'receptacle' see PARA 1147 note 1 ante.

8 London Local Authorities Act 1990 s 38(2)(a). As to the meaning of 'street' see PARA 1148 note 3 ante.

9 Ibid s 38(2)(b).

10 Ibid s 38(2).

11 Ibid s 38(2).

12 For the meaning of 'authorised officer' see PARA 1149 note 3 ante.

13 As to the office of constable see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

14 For these purposes, references to proceedings are to proceedings in respect of the alleged offence in relation to which the article or thing is seized: London Local Authorities Act 1990 s 38(4A)(a) (s 38(4A) added by the London Local Authorities Act 1994 s 6(11)).

15 Is the subject of forfeiture under the London Local Authorities Act 1990 s 38(5): see the text to note 23 infra.

16 Ibid s 38(4) (amended by the London Local Authorities Act 1994 s 6(11)). An authorised officer must produce his authority if required to do so by the person having care or control of anything seized in pursuance of the powers in the London Local Authorities Act 1990 s 38(4) (as amended): s 38(7) (amended by the London Local Authorities Act 1994 s 6(11)).

17 London Local Authorities Act 1990 s 38(4A)(a) (as added: see note 14 supra). The text refers to any article or thing being seized under s 38(4) (as amended): see the text to notes 15-16 supra.

18 Ibid s 38(4A)(b) (as added: see note 14 supra), which is expressed to be subject to s 38(4A)(e) (as added) (see the text to note 22 infra). The text refers to forfeit under s 38(5): see the text to note 23 infra.

19 For the meaning of 'ice-cream trading' see PARA 1149 note 7 ante.

20 As to the Metropolitan Police Commissioner see POLICE vol 36(1) (2007 Reissue) PARA 106.

21 London Local Authorities Act 1990 s 38(4A)(c) (as added: see note 14 supra). Section 38(4A)(c) (as added) does not apply where (1) the owner or registered keeper of the vehicle has been convicted of an offence under Pt III (ss 21-41) (as amended) (see PARA 1147 et seq ante); or (2) the owner or registered keeper of the vehicle is being prosecuted for a previous alleged offence under Pt III (as amended); or (3) the vehicle has been used in the commission of such an offence or previous alleged offence, if the offence or previous alleged offence was committed or is alleged to have been committed no more than three years before the seizure and, in the case of an alleged offence, the proceedings are continuing: s 38(4A)(d) (as so added).

22 Ibid s 38(4A)(e) (as added: see note 14 supra). Where the article or thing is not returned because it has not proved possible to identify the person from whom it was seized and ascertain his address the borough council (whether the article or thing was seized by a constable or by an authorised officer) may apply to a magistrates' court for an order as to the manner in which it should be dealt with: s 38(4A)(f) (as so added).

23 Ibid s 38(5). The court must not order anything to be so forfeited where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made and in considering whether to make such an order a court must have regard to the value of the property, and to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making): s 38(6) (amended by the London Local Authorities Act 1994 s 6(11)).

24 London Local Authorities Act 1990 s 38(8)(a)(i) (s 38(8) added by the London Local Authorities Act 1994 s 6(11)). The text refers to an article, thing or receptacle seized under the London Local Authorities Act 1990 s 38(4) (as amended): see the text to notes 12-16 supra.

25 Ibid s 38(8)(a)(ii)(A) (as added: see note 24 supra).

26 Ibid s 38(8)(a)(ii)(B) (as added: see note 24 supra).

27 Ibid s 38(8)(b) (as added: see note 24 supra).

28 Ie under ibid s 38(4) (as amended): see the text to notes 12-16 supra.

29 Ibid s 38(8)(c) (as added: see note 24 supra).

UPDATE

1159 Unlicensed street trading

TEXT AND NOTES--See also 1990 Act s 38B (added by London Local Authorities Act 2007 s 46) (motor vehicles) and 1990 Act s 38C (added by 2007 Act s 47) (disposal orders).

NOTE 8--The display of a single vehicle for sale on a public highway is capable of giving rise to the offence of unauthorised street trading: *Haringey LBC v Michniewicz* [2004] All ER (D) 97 (Jun), DC.

NOTE 11--The defence may be made out where there are multiple reasons for a vehicle for sale being displayed in public, or where the vehicle is not in the control of the defendant at the relevant time: *Onasanya v Newham LBC* [2006] EWCA Civ 1775, [2006] 4 All ER 459.

TEXT AND NOTES 12-16--The 1990 Act s 38(4) is subject to s 38A (as added by London Local Authorities Act 2007 s 45) which makes provision for the seizure of perishable items: 1990 Act s 38(4) (amended by 2007 Act s 44(2)(a)). The proviso in the 1990 Act s 38(4) is omitted: 2007 Act s 44(2)(b).

NOTE 23--Where not all goods to be forfeited produced in court, the court may admit a written statement detailing the goods or adjourn the proceedings in order that the goods be viewed by both parties at a convenient time and place: *R (on the application of Islington LBC) v Jordan* [2002] EWHC 2645 (Admin), (2003) JP Jo 12.

Halsbury's Laws of England/MARKETS, FAIRS AND STREET TRADING (VOLUME 29(2) (REISSUE))/5. STREET TRADING/(3) STREET TRADING IN GREATER LONDON/(iii) Street Trading in the City of London/1160. Prohibition on street trading.

(iii) Street Trading in the City of London

1160. Prohibition on street trading.

It is unlawful for any person to engage in street trading¹ in the City of London other than a licensed street trader² in that part of Middlesex Street which lies between the junctions of that street with Widegate Street and Sandys Row between the hours of 9 am and 2 pm on any Sunday, other than Christmas Day when that day falls on a Sunday³. Any person unlawfully engaging in street trading in the City of London is guilty of an offence and liable to a fine⁴.

The prohibition on street trading in the City of London⁵ does not apply to a person who sells or exposes or offers for sale newspapers or periodicals in a street unless he uses for that purpose a receptacle which occupies a stationary position in a street and, in a case where he sells or exposes or offers for sale only daily, weekly or Sunday newspapers, such receptacle: (1) exceeds 3 feet in height⁶; (2) occupies a position extending over a portion of the footway of the street measuring more than 2 feet 6 inches in any direction or exceeding 3 square feet in area⁷; or (3) occupies a position extending over a portion of the carriageway of the street⁸. In addition, the prohibition does not apply to a trader who is for the time being carrying on business with persons residing or employed in premises in or abutting on, a street in respect of any street trading conducted by him in the course of that business unless he permits any receptacle used by him to occupy a stationary position in the street for an unreasonable time⁹.

The Corporation¹⁰ may make byelaws relating to the carrying on of street trading by licensed street traders for regulating the following matters, that is to say¹¹:

- 116 (a) the storage and the sanitary supervision, while at the place of intended sale or exposure or offering for sale, of articles or things intended to be sold or exposed or offered for sale¹²;
- 117 (b) the deposit and removal of refuse and the containers to be used for the deposit of such refuse pending its removal¹³;
- 118 (c) the allocation, maximum dimension and arrangement of receptacles¹⁴;
- 119 (d) any other conditions under which articles or things may be sold or exposed or offered for sale¹⁵;
- 120 (e) the manner in which street trading is carried on¹⁶;
- 121 (f) the charges which may be made¹⁷; and
- 122 (g) the wearing of street traders' badges and the production, when required to do so, of street trading licences¹⁸.

In addition, the Corporation may designate: (i) a public off-street car park, garden or other park or open space under its management and control; (ii) a street, PARADE or way to which the public commonly has access, whether or not as of right; and (iii) any road or any unenclosed land adjacent to, and within the distance prescribed by the City of London (Various Powers) Act 1987¹⁹ of, any road, as a place where it is prohibited to photograph, any person by way of trade or business without the written consent of the Corporation²⁰.

¹ For these purposes, a person is deemed to engage in street trading on any occasion when he sells, exposes or offers for sale any article or thing in a street: see the City of London (Various Powers) Act 1965 ss

12, 13(4); City of London (Various Powers) Act 1987 s 6. For these purposes, 'article or thing' includes any living thing: City of London (Various Powers) Act 1965 s 12; City of London (Various Powers) Act 1987 s 6.

2 For these purposes, 'licensed street trader' means a person licensed to engage in street trading by a licence granted under the City of London (Various Powers) Act 1965 Pt III (ss 12-27) (as amended), or the City of London (Various Powers) Act 1987 Pt III (ss 6-26), as the case may be: see the City of London (Various Powers) Act 1965 s 12; City of London (Various Powers) Act 1987 s 6. As to the licence and fees and charges on licences see the City of London (Various Powers) Act 1965 ss 16, 17; City of London (Various Powers) Act 1987 ss 8-10, 12. An appeal may be brought within 14 days of notification by the Corporation of its decision not to grant or renew a licence, or to vary or revoke such a licence: see the City of London (Various Powers) Act 1965 s 18 (amended by the City of London Act 1987 ss 25, 36, Schedule Pt I); s 11. Where such an appeal is brought against a decision of the Corporation, until it has been determined or abandoned, the licence is treated as having been renewed, not revoked or without any variation, as the case may be: see the City of London (Various Powers) Act 1965 s 22(1) proviso (amended by the City of London (Various Powers) Act 1987 ss 25, 36, Schedule Pt I); s 17. 'Corporation' means the mayor and commonalty and citizens of the City of London acting by the Common Council of the City of London: City of London (Various Powers) Act 1965 s 3(1); City of London (Various Powers) Act 1987 s 2(1).

3 City of London (Various Powers) Act 1965 s 13(1), (2) (s 13(1) amended by the City of London (Various Powers) 1987 s 25(1), Schedule Pt I); City of London (Various Powers) Act 1987 ss 7, 15. As from a day to be appointed the City of London (Various Powers) Act 1965 Pt III (as amended) is repealed by the City of London (Various Powers) Act 1987 s 25(2), Schedule Pt II, and replaced by the City of London (Various Powers) Act 1987 Pt III. The Corporation must not appoint a day under s 25(2) earlier than the date of the death of the last person entitled to the grant of a licence pursuant to the City of London Various Powers Act 1965 Pt III (as amended) (as having effect by virtue of the City of London (Various Powers) Act 1970 s 10 (prospectively repealed), and as soon as may be after appointing a day under the City of London (Various Powers) Act 1987 s 25(2) the Corporation must publish notice of it in the London Gazette and in a newspaper circulating in the city: City of London (Various Powers) Act 1987 s 25(3). At the date at which this volume states the law no such day had been appointed. Until the appointed day the City of London (Various Powers) Act 1965 Pt III (as amended), and the City of London (Various Powers) Act 1987 Pt III operate concurrently, with all new street trading licences being issued and under the latter whilst the street trading licences existing prior to the commencement of that Act continue to be renewed under the City of London (Various Powers) Act 1965 Pt III (as amended).

Nothing in the City of London (Various Powers) Act 1965 Pt III (as amended) or the City of London (Various Powers) Act 1987 Pt III exempts any person from, or alters or affects the operation of, the provisions of any enactment relating to the obstruction of traffic in highways (City of London (Various Powers) Act 1965 s 25; City of London (Various Powers) Act 1987 s 20), or in the case of any market or fair held in pursuance of any statute, royal licence, royal charter or letters patent, or as of right from time immemorial, affects the sale or exposure or offer for sale of goods in any such market or fair by any person who has paid a toll to, or is acting under the written authority of, a person holding or entitled to hold such market or fair or entitled to receive tolls in respect of sales made or stalls or stands occupied in such market or fair: City of London (Various Powers) Act 1965 s 26; City of London (Various Powers) Act 1987 s 21.

4 City of London (Various Powers) Act 1965 s 22(1); City of London (Various Powers) Act 1987 s 16(1). An offence is also committed where any person makes a false statement for the purpose of obtaining a street trading licence, or the renewal of a licence: see the City of London (Various Powers) Act 1965 s 22(2); City of London (Various Powers) Act 1987 s 16(2). For the purposes of the City of London (Various Powers) Act 1965 s 22 (as amended), the fine imposed is on not exceeding level 3 on the standard scale: s 22(4) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). For the purposes of the City of London (Various Powers) Act 1987 s 16, the fine imposed is on not exceeding level 2 on the standard scale: s 16(3). As to the standard scale see PARA 1012 note 6 ante. In any proceedings for an offence under the City of London (Various Powers) Act 1965 s 22 (as amended), or the City of London (Various Powers) Act 1987 s 16, where it is shown that any article or thing was displayed in or on any receptacle in a stationary position in any street, that article or thing is presumed to have been exposed or offered for sale (at such time and in such position at which it was so displayed) by the person in charge, or appearing to be in charge, of it unless it is shown to the satisfaction of the court that the article or thing was brought into that street for some purpose other than for the purpose of selling it or exposing or offering it for sale in a street: City of London (Various Powers) Act 1965 s 23; City of London (Various Powers) Act 1987 s 18. For these purposes, 'street trading licence' means a licence to engage in street trading granted under the City of London (Various Powers) Act 1965 Pt III (as amended) or the City of London (Various Powers) Act 1987 Pt III; and 'receptacle' includes a vehicle or stall and any basket, bag, box, vessel, stand, easel, board, tray or other structure or thing which is used (whether or not constructed or adapted for such use) as a container for, or for the display of, any article or thing: City of London (Various Powers) Act 1965 s 12; City of London (Various Powers) Act 1987 s 6.

5 In the provisions of the City of London (Various Powers) Act 1965 Pt III (as amended) and the City of London (Various Powers) Act 1987 Pt III.

6 City of London (Various Powers) Act 1965 s 24(1)(a); City of London (Various Powers) Act 1987 s 19(1)(a).

7 City of London (Various Powers) Act 1965 s 24(1)(b); City of London (Various Powers) Act 1987 s 19(1)(b).

8 City of London (Various Powers) Act 1965 s 24(1)(c); City of London (Various Powers) Act 1987 s 19(1)(c).

9 City of London (Various Powers) Act 1965 s 24(2); City of London (Various Powers) Act 1987 s 19(2).

10 See note 2 *supra*.

11 City of London (Various Powers) Act 1965 s 21(1) (amended by the City of London (Various Powers) Act 1987 ss 25, 36, Schedule Pt I); City of London (Various Powers) Act 1987 s 14.

12 City of London (Various Powers) Act 1965 s 21(1)(a); City of London (Various Powers) Act 1987 s 14.

13 City of London (Various Powers) Act 1965 s 21(1)(b); City of London (Various Powers) Act 1987 s 14. The Corporation may sell or let on hire to licensed street traders containers for the deposit of refuse arising in the course of street trading: City of London (Various Powers) Act 1965 s 20 (amended by the City of London (Various Powers) Act 1987 ss 25, 36, Schedule Pt I); City of London (Various Powers) Act 1987 s 13.

14 City of London (Various Powers) Act 1965 s 21(1)(c); City of London (Various Powers) Act 1987 s 14.

15 City of London (Various Powers) Act 1965 s 21(1)(d); City of London (Various Powers) Act 1987 s 14.

16 City of London (Various Powers) Act 1965 s 21(1)(e); City of London (Various Powers) Act 1987 s 14.

17 City of London (Various Powers) Act 1965 s 21(1)(f); City of London (Various Powers) Act 1987 s 14. The text refers to charges which may be made under the City of London (Various Powers) Act 1965 s 19; and the City of London (Various Powers) Act 1987 s 12.

18 City of London (Various Powers) Act 1965 s 21(1)(g) (amended by the City of London (Various Powers) Act 1987 ss 25, 36, Schedule Pt I); City of London (Various Powers) Act 1987 s 14. For the purposes of the City of London (Various Powers) Act 1965 the confirming authority for byelaws made under s 21 is the Secretary of State: s 21(3). The notice of intention to apply for confirmation of byelaws made by the Corporation under s 21 (as amended), given in accordance with the provisions of the Local Government Act 1972 s 236 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 556), must comply with rules made by the Secretary of State for the publication of byelaws made under the London County Council (General Powers) Act 1957 Pt VII (ss 62-77) (as amended; prospectively repealed) (regulation of street trading) (see PARA 1130 *et seq ante*), and before applying for confirmation of such byelaws the Corporation must give such other notice of its intention as may be prescribed in those rules: City of London (Various Powers) Act 1965 s 21(4) (amended by the City of London (Various Powers) Act 1977 s 20(1), Sch 3).

19 Ie within 15 metres of any road being in any case within, or within 45 metres of any part of, that part of Middlesex Street which lies within the city: see the City of London (Various Powers) Act 1987 s 26.

20 See *ibid* s 26. Any person who acts in contravention of s 26 is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: see s 26(2). As to the standard scale see PARA 1012 note 6 *ante*.